Florida Gulf Coast University Board of Trustees  
April 10, 2003

SUBJECT: Section 125 Cafeteria Plan for University Employees

PROPOSED BOARD ACTION

(1) Adopt the State of Florida’s Salary Reduction Cafeteria Plan and (2) authorize execution of the Cafeteria Plan Adoption Agreement.

BACKGROUND INFORMATION

Section 125 of the Internal Revenue Code allows employees to earmark pre-tax dollars toward payment of insurance premiums (health, dental, vision, etc.) and flexible spending accounts for medical and dependent care expenses. Such pre-tax dollars are not subject to social security, federal or state taxes, thereby enabling employees to increase their net income while reducing the taxes that the University as an employer must pay. As state employees, University employees historically have participated in such a plan through the State of Florida Salary Reduction Cafeteria Plan (“Cafeteria Plan”). The Division of State Group Insurance, Department of Management Services (DMS), administers the Cafeteria Plan on behalf of all State of Florida employees.

Effective January 7, 2003, the University ceased to be a state agency, and its employees transitioned from being employees of the State of Florida to employees of the Board of Trustees. Due to the change in employers, DMS has requested that each university board of trustees adopt the Cafeteria Plan, retroactive to January 7, 2003, and forward an executed copy of the enclosed adoption agreement. Adopting this plan will ensure that university employees will continue to participate in the Cafeteria Plan and to receive these benefits without interruption.
Supporting Documentation Included: (1) Executive Summary of the State of Florida Salary Reduction Cafeteria Plan, (2) the Cafeteria Plan, and (3) the Cafeteria Plan Adoption Agreement

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Legal Review by: N/A

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Executive Summary
State of Florida Salary Reduction Cafeteria Plan

The Department of Management Services State of Florida Salary Reduction Cafeteria Plan authorizes the following plans and components:

- Participants under a Health Insurance Plan
- Participants under a Life Insurance Plan
- Participants under a Supplemental Insurance Plan
- Participants under a Medical Reimbursement Component
- Participants under a Dependent Care Component
- Such other benefits as the Employer may make available to participants by Amendment hereto

In addition to the Cafeteria Plan listed above and administered by DMS, Florida Gulf Coast University administers the following pre-tax plan:

- Participants under the Employee Pre-tax parking plan
State of Florida Salary Reduction Cafeteria Plan
With a Premium Payment Feature,
a Medical Reimbursement Component,
and a Dependent Care Component

ARTICLE I - INTRODUCTION

1.1 Establishment of Plan

The Department of Administration, Division of State Employees' Insurance established the State of Florida Flexible Benefits Plan effective July 1, 1989. The Department of Management Services, Division of State Group Insurance hereby amends, restates and continues the State of Florida Flexible Benefits Plan, hereafter known as the State of Florida Salary Reduction Cafeteria Plan (“the Plan”), effective January 1, 2000.

This Plan is designed to permit an Eligible Employee to pay on a pre-tax basis for his share of premiums under the Health Insurance Plan, the Life Insurance Plan and the Supplemental Insurance Plan, and to contribute to an account for pre-tax reimbursement of certain Medical Care Expenses and Dependent Care Expenses.

1.2 Legal Status

This Plan is intended to qualify as a "cafeteria plant" under § 125 of the Internal Revenue Code of 1986, as amended (the "Code"), and regulations issued there under.

The medical reimbursement component of this Plan is also intended to qualify as a "self- insured medical reimbursement plan" under Code § 105(h), and the Medical Care Expenses reimbursed under that component are intended to be eligible for exclusion from participating Employees' gross income under Code § 105(b).

The dependent care assistance plan component of this Plan is intended to meet the requirements of Code § 129.

The life insurance plan component of the Plan is intended to meet the requirements of Code § 79.

ARTICLE II - DEFINITIONS AND CONSTRUCTION

2.1 Definitions

"Administrator" means the State of Florida, Department of Management Services, Division of State Group Insurance (the contact person is the Director of the Division of State Group Insurance). The Administrator may, however, delegate any of its powers or duties under the Plan in writing to any person.

"Change in Status" means the events described below and any other events that the Administrator (in its sole discretion) determines to be within prevailing IRS guidance:
• a change in the Participant's legal marital status, including marriage, death of a Spouse, divorce, legal separation or annulment;

• a change in the Participant’s number of Dependents, including the birth of a child, adoption (or placement for adoption) of a child, or death of a Dependent;

• termination or commencement of employment by the Participant, the Participant's Spouse or the Participant's Dependent;

• a reduction or increase in hours of employment by the Participant, the participant's Spouse or the Participant's Dependent, including a change between part-time and full-time status, a strike or lockout, or commencement or return from an unpaid leave of absence;

• the dependent's satisfying or ceasing to satisfy the Dependent eligibility requirements for a particular benefit, such as due to attaining a specified age or ceasing to be a Student; and

• a change in the place of residence or work of the Participant, the participant's Spouse or the Participant's Dependent.


"Compensation" means the total Form W-2 compensation for federal income tax withholding purposes paid by the Employer to an Employee for services performed, determined prior to any Salary Reduction election under this Plan, prior to any salary reduction election under any other Code § 125 cafeteria plan, and prior to any elective salary deferral contributions under any Code §401 (k), 403(b) or 408(k) arrangement.

"Dependent" means the Employee's Spouse, those unmarried children for whom the Employee has financial responsibility, including the Employee's own children, stepchildren, legally adopted children or children placed in the Employee's home for the purposes of adoption in accordance with Chapter 63, Florida Statutes, children for whom the Employee has been granted court ordered custody, foster children and the newborn child of an eligible child of the Employee, where the eligible child is enrolled at the time of the birth and the newborn child is enrolled within 60 days of birth. The term, "Dependent" also includes any individual who qualifies as a dependent under the terms of any insurance contract under this Plan. However, for the purposes of the Medical Reimbursement Component, the term "Dependent" includes any individual who is a tax dependent of an Employee as defined in Internal Revenue Code §152.

Notwithstanding the foregoing, the Health Insurance Plan and the Medical Reimbursement Component of this Plan will provide benefits in accordance with the applicable requirements of any qualified medical child support order or otherwise in accordance with § 609 of ERISA.

"Dependent Care Component" means the component of the Plan providing the Dependent Care Expense benefits described in Article VII of the Plan.

"Dependent Care Expenses" means expenses that are considered to be employment- related expenses under Code § 21 (b ) (2) (relating to expenses for household and dependent care services necessary for gainful employment of the Employee and Spouse, if any), if paid for by the Employee to provide Qualifying Dependent Care Services.
"Dependent Care Reimbursement Account" means the account described in Article IX of this Plan.

"Earned Income" means the total compensation received from the Employer, reportable on Form W-2 for the Plan Year, but does not include (i) any "amount received pursuant to any dependent care assistance program under Code § 129; (ii) any amount received as a pension or annuity; or (iii) workers compensation.

"Election Form" means the form or forms provided by the Administrator for the purpose of allowing an Employee to participate in this Plan by electing Salary Reductions to pay for any of the following benefits: pre-tax payment of health, life and supplemental insurance plan premiums, reimbursements for Medical Care Expenses, and reimbursements for Qualifying Dependent Care Expenses.

"Eligible Employee" means an Employee eligible to participate in this Plan.

"Eligible Employment-Related Expenses" means those Dependent Care Expenses paid or incurred incident to maintaining employment after the date of the Employee's participation in the Dependent Care Component of this Plan, other than amounts paid to:

- an individual with respect to whom a Dependent deduction is allowable under Code § 151(a) to the Participant or the Participant's Spouse;
- the Participant's Spouse; or
- a child of the Participant who is under 19 years of age.

"Employee" means full-time or part-time state employees of any branch or agency of Florida government holding salaried positions and paid by state warrant or from agency funds, and employees paid from regular appropriations for 9 months employment, including university personnel on academic contracts; however, in no case shall "Employee" include persons paid from Other Personal Services funds, as defined in section 216.011 (z), Florida Statutes. The term "Employee" does not include any common-law employee who is a leased employee (including but not limited to an individual defined in Code § 414(n)), or any common-law employee who is an individual classified by the Employer as a contract worker, other personal services worker, independent contractor, temporary employee or casual employee, whether or not any such person is on the employer's W-2 payroll or determined by the IRS or others to be common-law employees of the Employer.

"Employer" means the State of Florida.


"Health Insurance Plan" means the plan(s) that the Employer maintains for its Employees (and for their respective spouses and eligible dependents), providing medical benefits through a group insurance policy or policies (including HMOs), which plan or plans qualify as accident or health plans under Code § 106 (other than a long-term care insurance plan). The Employer may substitute, add, subtract or revise at any time the menu of such plans and/or the benefits, terms and conditions of any such plans. Any such substitution, addition, subtraction or revision will be
communicated to Participants and will automatically be incorporated by reference under this Plan. The specific coverage selected by the Employee (for the Employee, Spouse and/or eligible Dependents) is considered the Employee's Health Insurance Plan coverage for purposes of this Plan (also referred to as "Health Insurance Plan benefits").

"HIP AA" means the Health Insurance Portability and Accountability Act of 1996, which, among other things, requires a group health plan to provide special enrollment rights to Participants and beneficiaries under certain circumstances.

"Life Insurance Plan" means the plan(s) that the Employer maintains for its Employees providing life insurance benefits through a group insurance policy or policies, which plan or plans qualify as life insurance plans under Code § 79. The Employer may substitute, add, subtract or revise at any time the menu of such plans and/or the benefits, terms and conditions of any such plans. Any such substitution, addition, subtraction or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan.

"Medical Care Expense" means an expense incurred by a Participant, or by the Spouse or Dependent of such Participant, for medical care as defined in Code § 213 (including, for example, amounts for certain hospital bills, doctor bills and prescription drugs), other than expenses that are excluded but only to the extent that the Participant or other person incurring the expense is not reimbursed for the expense (nor is the expense reimbursable) through the Health Insurance Plan, other insurance, or any other accident or health plan.

"Medical Reimbursement Account" means the account described in Article IX of this Plan.

"Medical Reimbursement Component" means the component of the Plan providing the medical reimbursement benefits described in Article VI of this Plan.

"Open Enrollment Period" with respect to a plan Year means the period, as designated by the Administrator, preceding a Plan Year in which Employees may make Salary Reduction Elections for such Plan Year.

"Participant" means an Eligible Employee who has elected to participate in this Plan in accordance with Articles III and IV.

"Plan" means the State of Florida Salary Reduction Cafeteria Plan as set forth herein and as amended from time to time.

"Plan Year" means the calendar year commencing on January 1 and ending on December 31.

"Premium Payment Component" means the component providing the premium payment benefits described in Article V of this Plan.

"Qualifying Individual" means:

- a Dependent of the Participant who is under the age of 13. For purposes of the Dependent Care Component of this Plan, the child of a divorced Participant shall be a Dependent of the Participant only if the Participant is the parent with custody of the child in accordance with Code § 21(e)(5);
• a Dependent of a Participant who is mentally or physically incapable of self-care; or the Spouse of a Participant who is mentally or physically incapable of self-care.

"Qualifying Dependent Care Services" means services relating to the care of a Qualifying Individual that enable the Participant and Spouse to remain gainfully employed, which are performed:

• in the Participant's home; or

• outside the Participant's home for (i) the care of a Dependent of the Participant who is under age 13; or (ii) the care of any other Qualifying Individual who resides at least eight hours per day in the Participant's household. If the expenses are incurred for services provided by a dependent care center (i.e., a facility that provides care for more than six individuals not residing at the facility) then the center must comply with all applicable state and local laws and regulations.

"Salary Reduction" means the amount by which the Participant's Compensation is reduced and applied by the Employer under this Plan to pay for one or more of the benefits provided under this Plan.

"Salary Reduction Agreement" means an agreement, the terms of which are incorporated herein by reference and made a part hereof, by which a Participant specifies his election of the benefits described in Section 4.1 of this Plan for which he is eligible, and, to the extent required, elects to reduce Compensation in order to purchase such benefits under the Plan.

"Spouse" means an individual who is legally married to a Participant. Notwithstanding this, for purposes of the Dependent Care Component of this Plan, the term Spouse shall not include (i) an individual legally separated from the Participant under a decree or (ii) an individual who, although is married to the participant, files a separate federal income tax return, maintains a separate principle residence from the Participant during the last six month of the taxable year, and does not furnish more than one-half of the cost of maintaining the principal place of abode of the Participant.

"Supplemental Plans" means the plan(s) that the Employer maintains for its Employees providing benefits through a group insurance policy or policies, which plan or plans qualifies accident or health plans under Code § 106 (other than a long-term care insurance plan). The Employer may substitute, add, subtract or revise at any time the menu of such plans and/or the benefits, terms and conditions of any such plans. Any such substitution, addition, subtraction or revision will be communicated to Participants and will automatically be incorporated by reference under this Plan. The specific coverage selected by the Employee is considered the Supplemental Insurance Plan coverage for purposes of this Plan (also referred to as "Supplemental Plan benefits").

2.2 Headings

The headings of the various Articles, Sections and Subsections are inserted for convenience of reference and are not to be regarded as part of this Plan or as indicating or controlling the meaning or construction of any provision.

2.3 Plan Provisions Controlling
In the event that the terms or provisions of any summary or description of this Plan or of any other instrument, are in any construction interpreted as being in conflict with the provisions of this Plan as herein set forth, the provisions of this Plan shall be controlling.

2.4 Code and ERISA Compliance

It is intended that this Plan meet all applicable requirements of the Code, ERISA, and of all regulations issued thereunder. (ERISA applies to the Medical Reimbursement Component only.) This Plan shall be construed, operated and administered accordingly, and in the event of any conflict between any part, clause or provision of this Plan and the Code and/or ERISA, the provisions of the Code and ERISA shall be deemed controlling, and any conflicting part, clause or provision of this Plan shall be deemed superseded to the extent of the conflict.

ARTICLE III- ELIGIBILITY AND PARTICIPATION

3.1 Eligibility

Any Employee who was a Participant in the Plan on the Effective Date of this amendment and restatement shall be eligible to continue participation in the Plan. Each other Employee shall become eligible to participate in the Plan upon employment with the Employer. The Administrator shall provide each Employee with a written notice of their eligibility in the Plan and instructions on how to submit a Salary Reduction Agreement.

3.2 Participation

To become a Participant, an Eligible Employee shall complete, execute and deliver: a Salary Reduction Agreement to the Administrator through the Employee’s agency personnel office within sixty (60) calendar days of initial employment with the Employer. By entering into a Salary Reduction Agreement, the Employee shall be deemed for all purposes to have agreed to participate and conform to the requirements of the Plan. Participation shall commence as of the first day of the month following the date on which the Participant files a Salary Reduction Agreement with the Administrator and the proper Salary Reductions have been made for the benefit elected, except that participation in the Medical Expense Component of this Plan shall commence upon receipt of the Salary Reduction Agreement by the Administrator.

Except as otherwise provided in Sections 5.6, 6.4 and 7.4 of this Plan, if an Eligible Employee fails to execute and deliver to the Administrator a Salary Reduction Agreement or to otherwise comply with the participation requirements of this Plan within sixty (60) calendar days of initial employment with the Employer, such Employee shall not become a Participant, but may become a Participant by subsequently executing and delivering a Salary Reduction Agreement to the Administrator during the Open Enrollment Period for succeeding Plan Years.

3.3 Cessation of Participation

A Participant will cease to be a Participant in this Plan (or in any component thereof) upon the earlier of:

- the termination of this Plan;
• the date on which the Employee becomes ineligible for benefits under the terms of each of the plans described in Section 4.1 of this Plan;

• the date on which the Employee ceases (because of retirement, death, termination of employment, layoff, reduction in hours, or any other reason) to be an Employee eligible to participate under Article III; or

• the date the Participant revokes his or her election to participate under a circumstance when such change is permitted under the terms of this plan.

Reimbursements after termination of participation will be made pursuant to Sections 6.6 and 7.6.

3.4 Participation Following Termination of Employment

A former Participant who is rehired prior to the last day of the calendar month following the date of a termination of employment will be reinstated with the same elections such individual had before termination. If a former Participant is rehired after the last day of the calendar month following termination of employment and is otherwise eligible to participate in the Plan, the individual may make new elections as a new hire, except that such individual may not enroll or reenroll in the Medical Reimbursement Component until the next Open Enrollment Period for any succeeding Plan Year.

3.5 Family and Medical Leave Act of 1993

Notwithstanding any provision to the contrary in this Plan, if a Participant goes on a qualifying leave under the Family and Medical Leave Act of 1993 (FMLA), then to the extent required by the FMLA, the Employer will continue to maintain the Participant's Health Insurance Plan benefits on the same terms and conditions as if the Participant were still an active Employee. That is, if the Participant elects to continue his or her coverage while on leave, the Employer will continue to pay its share of the premium.

A Participant may elect to continue his or her coverage under the premium payment and/or medical reimbursement components of the Plan during the FMLA leave. If the participant elects to continue coverage while on leave, the Participant may pay the Participant's share of the premium in one of the following ways:

• with after-tax dollars, by sending monthly payments to the Employer;

• with pre-tax dollars, by pre-paying all or a portion of the premium for the expected duration of the leave on a pre-tax salary reduction basis out of pre-leave Compensation. To pre-pay the premium, the Participant must make a special election to that effect prior to the date that such Compensation would normally be made available (note, however, that pre-tax dollars may not be used to fund coverage during the next Plan Year); or

• under another arrangement agreed upon between the Participant and the Administrator.

If a Participant's coverage ceases while on FMLA leave, the Participant will be permitted to reenter the Plan upon return from such leave on the same basis the Participant was participating in the Plan prior to the leave, or as otherwise required by the FMLA.
ARTICLE IV – BENEFIT ELECTIONS

4.1 Benefit Options

A Participant may choose under the Plan to receive his full Compensation for any Plan Year in cash or to designate a portion of his Compensation for each Plan Year to be applied by the Administrator: towards the cost of one or more of the following benefits:

(a) Benefits available to the Participant under a Health Insurance Plan as described in Article V of this Plan;

(b) Benefits available to the Participant under a Life Insurance Plan as described in Article V of this Plan;

(c) Benefits available to the Participant under a Supplemental Insurance Plan as described in Article V and Appendix B of this Plan;

(d) Benefits available to the Participant under a Medical Reimbursement Component as described in Article VI of this Plan;

(e) Benefits available to the Participant under a Dependent Care Component as described in Article VII of this Plan; and

(f) Such other benefits as may be made available to Participants by the Employer by amendment hereto.

4.2 Election of Benefits in Lieu of Cash

A Participant may elect under the Plan to receive one or more benefits in accordance with the procedures described in Section 4.4. If a Participant elects a benefit described in Section 4.1(d)(e), the Participant’s Compensation will be reduced and an amount equal to the reduction will be paid or credited by the Employer to a reimbursement account administered by the Administrator in accordance with the Medical Reimbursement Component or the Dependent Care Component, as the case may be. If a Participant elects a benefit described in Section 4.1 (a)(b)(c), the Participant’s Compensation will be reduced and an amount equal to the reduction will be utilized by the Employer under the terms of the Health Insurance Plan, Life Insurance Plan or Supplemental Insurance Plan to cover the cost of benefits under such plans.

4.3 Salary Reduction Agreement

Each Eligible Employee's Salary Reduction Agreement shall remain in effect for the entire Plan Year to which it applies, shall be irrevocable (except as provided in Sections 5.6, 6.4 and 7.4) and shall set forth the amount of the Participant's Compensation to be used to purchase or provide benefits and the benefits to be purchased or provided.

4.4 Election Procedure

(a) An Employee who becomes an Eligible Employee on the first day of, or (for any Employee who first becomes eligible) during, a Plan Year may make an initial election to participate in the Plan for all or the remainder of the Plan Year by executing and delivering a Salary Reduction Agreement to the Administrator through the Employee's agency personnel office within sixty (60)
calendar days of the first date of employment with the Employer. However, an election pursuant to this Section 4.4 shall not be effective until the first pay period following the date of receipt of the Salary Reduction Agreement by the Administrator, and shall be limited to benefit expenses incurred for the balance of the Plan Year for which the election is made. A Participant may change his or her election by executing and delivering a new or revised Salary Reduction Agreement to the Administrator on or before the last day of the Open Enrollment Period for the Plan Year for which such change is to be effective.

(b) A Participant who fails to return a new or revised Salary Reduction Agreement to the Administrator (through the agency personnel office) on or before the last day of the Open Enrollment Period for any Plan Year shall be deemed to have elected the same type of coverage as was in effect under his Salary Reduction Agreement for the immediately preceding Plan Year. The Participant shall also be deemed to have agreed to a reduction in his Compensation for the Plan Year equal to the Participant's share of the cost from time to time during such Plan Year of each such benefit.

ARTICLE V -PREMIUM PAYMENT COMPONENT

5.1 Benefits

The benefits available to an Eligible Employee under this Premium Payment Component of the Plan are available only to those Employees who pay for his share of the costs of the benefits on a pre-tax basis through this Plan. An Eligible Employee can elect to participate in the Premium Payment Component of the Plan by electing to pay for his share of the premiums under the Health Insurance Plan, Life Insurance Plan and Supplemental Insurance Plans with pre-tax Salary Reduction dollars. An Employee may elect not to pay his share of the premiums under the Health Insurance Plan and/or Life Insurance Plan through the Premium Payment Component and instead pay for his share of the premiums with after tax dollars outside of this Plan. However, a Participant may only pay for his share of the premiums for any Supplemental Insurance Plan by electing to participate in the Premium Payment Component of the Plan, and by paying his share of the premiums for such Supplemental Insurance Plan through this Plan.

5.2 Contributions

If an Employee elects to participate in the Premium Payment Component, the Participant's share (as determined by the Employer) of the premium for the Plan benefits elected by the Participant will be financed by Salary Reductions. The Salary Reduction for each pay period for a Participant is an amount equal to the annual premium divided by the number of pay periods in the Plan Year, or an amount otherwise mutually agreed upon. Salary Reductions are applied by the Employer to pay for the premium for the Participant’s benefits and, for the purposes of this Plan, are considered Employer contributions. The Employer will pay under this Plan, its share, if any, of the premiums for Participants who elect to participate in the pre-tax feature of this Plan. For an Employee who does not elect the benefits with respect to the Health Insurance Plan or Life Insurance Plan under this Premium Component Plan, and for those Employees to whom the benefits of this Premium Component Plan, or any part thereof, are not available, both the Employee portion, if any, and the Employer portion of the premiums will be paid outside of this Plan. The required contributions for the Health Insurance Plan and the Life Insurance Plan are shown at Appendix A. The Employer does not contribute any of the premium cost of any Supplemental Insurance Plan.

5.3 Health Benefits Provided Under the Health Insurance Plan
Health benefits will be provided not by this Plan but by the Health Insurance Plan. The types and amounts of benefits available under the Health Insurance Plan, the requirements for participating in the Health Insurance Plan, and the other terms and conditions of coverage and benefits of the Health Insurance Plan are set forth from time to time in the Health Insurance Plan. All claims to receive benefits under the Health Insurance Plan shall be subject to and governed by the terms and conditions of the Health Insurance Plan and the rules, regulations, policies and procedures from time to time adopted in accordance therewith.

5.4 Life Benefits Provided Under the Life Insurance Plan

Life benefits will be provided not by this Plan but by the Life Insurance Plan. The types and amounts of benefits available under the Life Insurance Plan, the requirements for participating in the Life Insurance Plan, and the other terms and conditions of coverage and benefits of the Life Insurance Plan are set forth from time to time in the Life Insurance Plan. All claims to receive benefits under the Life Insurance Plan shall be subject to and governed by the terms and conditions of the Life Insurance Plan and the rules, regulations, policies and procedures from time to time adopted in accordance therewith.

5.5 Supplemental Benefits Provided Under the Supplemental Insurance Plans

Supplemental benefits will be provided not by this Plan but by the Supplemental Insurance Plans. The types and amounts of benefits available under the Supplemental Insurance Plans, the requirements for participating in the Supplemental Insurance Plans, and the other terms and conditions of coverage and benefits of the Supplemental Insurance Plan are set forth from time to time in the Supplemental Insurance Plans. All claims to receive benefits under the Supplemental Insurance Plans shall be subject to and governed by the terms and conditions of the Supplemental Insurance Plans and the rules, regulations, policies and procedures from time to time adopted in accordance therewith. A general description of the benefits provided under the Supplemental Insurance Plan is at Appendix B.

5.6 Irrevocability of Election

Except as described below in this Section 5.6, a Participant's election under the premium payment component of this Plan is irrevocable for the duration of the Plan Year to which it relates. In other words, unless one of the exceptions applies, the Participant may not change any elections for the duration of the Plan Year regarding:

- participation in this Plan;
- Salary Reduction amounts; or
- election of particular component plan benefits.

The exceptions to the irrevocability requirement, which would permit a Participant to make a mid-year election change in benefits and/or Salary Reduction amounts for this Premium Payment Component are as follows:
(a) Change in Status. A Participant may change or terminate his or her actual or deemed election under the Plan upon the occurrence of a Change in Status, but only if such change or termination is made on account of, and is consistent with, the Change in Status. The Administrator (in its sole
discretion) shall determine whether a requested change is on account of, and is consistent with, a Change in Status.

(b) Special HIP M Enrollment Rights. If an Employee, Spouse or Dependent enrolls in the Health Insurance Plan pursuant to special enrollment rights under HIP AA, then the Employee may make a corresponding change in election under this Plan. Generally, special enrollment rights arise under HIP AA when (i) an Employee declines medical coverage under a group health plan because of outside medical coverage, and eligibility for such other coverage is subsequently lost due to loss of eligibility under the other plan; or (ii) an Employee acquires a new Dependent as a result of marriage, birth, adoption, or placement for adoption. Special enrollment rights under the Health Insurance Plan will be determined by the terms of the Health Insurance Plan.

(c) Certain judgments, decrees and orders. If a judgment, decree, or order (an "Order") resulting from a divorce, legal separation, annulment or change in legal custody (including a qualified medical child support order, as defined in § 609 of ERISA) requires accident or health coverage for a Participant's child, a Participant may (i) change his election to provide coverage for the child (provided that the Order requires the Participant to provide coverage); or (ii) change his election to revoke coverage for the child if the Order requires that the former spouse provide coverage under the former spouse's plan.

(d) Medicare and Medicaid. If the Participant, the Participant's Spouse, or the Participant's Dependent who is enrolled in a health or accident benefit under this Plan becomes entitled to Medicare or Medicaid (other than coverage consisting solely of benefits under § 1928 of the Social Security Act providing for pediatric vaccines), the Participant may cancel the health or accident coverage of the person becoming entitled to Medicare or Medicaid. If an Employee, the Employee's Spouse, or the Employee's Dependent not enrolled in a health or accident benefit under this Plan, loses entitlement to Medicare or Medicaid (other than coverage consisting solely of benefits under § 1928 of the Social Security Act providing for pediatric vaccines), the Employee may elect to commence or increase health or accident coverage of the person losing entitlement to Medicare or Medicaid.

(e) Significant Change in Cost or Coverage. A Participant may revoke a prior election with respect to pre-tax contributions and, in lieu thereof, may receive, on a prospective basis, coverage under another plan with similar coverage if any independent, third-party provider of medical-benefits previously elected by the Participant either significantly increases the premiums for such coverage) or significantly curtails the coverages available under such plans, during the Plan Year coverage period. (Note: If any mid-year premium increase by the third-party provider is insignificant, the Participant's salary reduction election will be automatically adjusted by the Administrator.)

(f) Significant Change in Coverage Attributable to Spouse's Employment. A Participant may revoke a prior election and make a new election where there has been a significant change in the coverage of the Participant or the Participant's Spouse attributable to the Spouse's employment. Such change is allowed only if the change is on account of and is consistent with the significant change in coverage attributable to the Spouse's employment. The Administrator (in its sole discretion) shall determine whether a requested change is on account of and is consistent with a significant change in coverage attributable to a Participant's Spouse's employment.

(g) An Employee or Participant entitled to make a new election under this Section must do so within 31 days of the event. If the special enrollment arises as a result of a newborn or newly-adopted child, and if enrollment is elected within 60 days of birth or adoption, then coverage
under the Health Insurance Plan will be retroactive to the date of birth, adoption, or placement for adoption (as required by HIP AA). In such event, the corresponding election change under this Plan may be retroactive as well. All other election changes shall be effective no sooner than the first day of the month following the date on which the Participant files the new Salary Reduction Agreement with the Plan Administrator and the proper Salary Reductions for the election have been made. Elections made pursuant to this Section shall be effective for the balance of the Plan Year in which the election is made, unless a subsequent event (described above) allows a further election change.

ARTICLE VI - MEDICAL REIMBURSEMENT COMPONENT

6.1 Benefits

An election to participate in the" Medical Reimbursement Component of this Plan is an election to receive benefits in the form of reimbursements for Medical Care Expenses, and to pay the premium for such benefits via Salary Reductions.

6.2 Maximum and Minimum Benefits

The maximum annual benefit amount that a Participant may elect to receive under this Plan in the form of reimbursements for Medical Care Expenses included in any Plan Year shall be $2,400. The minimum annual benefit amount that a Participant may elect to receive under this Plan in the form of reimbursements for Medical Care Expenses incurred in any Plan Year shall be $60. Amounts received that are attributable to reimbursements due for Medical Care Expenses incurred by the Participant's Spouse or Dependents shall be attributed to the Participant. For subsequent Plan Years, the elected annual benefit amount will be carried forward by the Administrator and shall be in effect for the subsequent Plan Year unless the election amount is changed by the Participant during the Open Enrollment Period.

6.3 Benefit Premiums; Salary Reduction Contributions

The annual premium for a Participant's benefits is equal to the annual benefit amount elected by the Participant (for example, if the maximum $2,400 annual benefit amount is elected, the annual premium amount is also $2,400). The Salary Reduction for each pay period for a Participant is an amount equal to the annual premium divided by the number of pay periods in the Plan Year) or an amount otherwise mutually agreed upon. Salary Reductions are applied by the Employer to pay for the premium for the Participant's benefits and) for the purposes of this Plan, they are considered Employer contributions.

6.4 Irrevocability of Election

Except as provided in this Section 6.4, a Participant's election to participate in the Medical Reimbursement Component of this Plan is irrevocable for the duration of the Plan Year to which it relates. In other words, the Participant may not change any elections for the duration of the Plan Year regarding:

- participation in this Plan;
- Salary Reduction amounts; or
- election of particular component Plan benefits.
The exceptions to the irrevocability requirement, which would permit a Participant to make a mid-year election change in Salary Reduction amounts for this Medical Reimbursement Account Component, are as follows:

(a) **Change in Status.** A Participant may change his or her actual or deemed election under the Plan upon the occurrence of a Change in Status, but only if such change is made on account of, and is consistent with, the Change in Status. The Administrator (in its sole discretion) shall determine whether a requested change is on account of, and is consistent with, a Change in Status.

(b) **Certain judgments, decrees and orders.** If a judgment, decree, or order (an "Order") resulting from a divorce, legal separation, annulment or change in legal custody (including a qualified medical child support order, as defined in § 609 of ERISA) requires accident or health coverage for a Participant's child, a Participant may (i) increase his election to provide coverage for the child (provided that the Order requires the Participant to provide coverage); or (ii) decrease his election to revoke coverage for the child if the Order requires that the former spouse provide coverage under the former spouse's plan.

(c) **Medicare and Medicaid.** If the Participant, the Participant's Spouse, or the Participant's Dependent who is enrolled in a health or accident benefit under the Health Insurance Plan becomes entitled to Medicare or Medicaid (other than coverage consisting solely of benefits under § 1928 of the Social Security Act providing for pediatric vaccines), the Participant may decrease his election to cancel coverage of the person becoming entitled to Medicare or Medicaid. If the Participant, the Participant's Spouse, or the Participant's Dependent becomes enrolled in a health or accident benefit under the Health Insurance Plan due to loss of entitlement to Medicare or Medicaid (other than coverage consisting solely of benefits under § 1928 of the Social Security Act providing for pediatric vaccines), the Participant may increase his election to provide coverage for the person losing entitlement to Medicare or Medicaid.

(d) **Significant Change in Health Coverage Attributable to Spouse's Employment.** A Participant may revoke a prior election and make a new election where there has been a significant change in the health coverage of the Participant or the Participant's Spouse attributable to the Spouse's employment. Such change is allowed only if the change is on account of and is consistent with the significant change in health coverage attributable to the Spouse's employment. The Administrator (in its sole discretion) shall determine whether a requested change is on account of and is consistent with a significant change in health coverage attributable to a Participant's Spouse's employment.

(e) An Employee or Participant entitled to make a new election under this Section must do so within 31 days of the event. All election changes shall be effective the date on which the Participant files the new Salary Reduction Agreement with the Administrator. Elections made pursuant to this Section shall be effective for the balance of the Plan Year in which the election is made, unless a subsequent event (described above) allows a further election change.

6.5 Reimbursement Procedure
(a) **Expenses That May Be Reimbursed.** Under the Medical Reimbursement Component, a Participant may receive reimbursement for Medical Care Expenses incurred during the Plan Year for which an election is in force. A medical expense is incurred at the time the medical care or service giving rise to the expense is furnished.

(b) **Maximum Reimbursement Available.** Reimbursement for Medical Care Expenses of the maximum dollar amount elected by the Participant for a Plan Year (reduced by prior reimbursements during the Plan Year) shall be available at all times during the Plan Year, regardless of the actual amounts credited to the Participant's Medical Reimbursement Account pursuant to Section 9.1. Notwithstanding the foregoing, no reimbursements will be available for expenses incurred after coverage under this Plan has terminated, unless the Participant has elected COBRA as provided in Section 6.6.

(c) **Timing of Reimbursement.** As soon as practicable after the Participant submits a reimbursement claim to the Administrator the Employer will reimburse the Participant for the Participant's Medical Care Expenses (if the Administrator approved the claim), or the Administrator will notify the Participant that his or her claim has been denied.

(d) **Use-It-or-Lose-It Rule.** If a Participant does not submit enough expenses to receive reimbursements for the full amount of coverage elected for a Plan Year, then the excess amount will be forfeited and applied by the Employer in accordance with Section 9.1.

(e) **Applying for Reimbursements.** A Participant who has elected to receive medical reimbursement benefits for a Plan Year may apply for reimbursement by submitting an application in writing to the Administrator in such form as the Administrator may prescribe, during the Plan Year and, by no later than April 15 following the close of the Plan Year in which the expense was incurred, setting forth:

- the person or persons on whose behalf Medical Care Expenses have been incurred; the nature of the expenses so incurred;

- the amount of the requested reimbursement; and

- a statement that such expenses have not otherwise been paid and are not expected to be paid through any other source.

The application shall be accompanied by bills, invoices, or other statements from an independent third party showing the amounts of such expenses, together with any additional documentation which the Administrator may request. Except for the final reimbursement claim for a Plan Year, no claim for reimbursement may be made unless and until the aggregate claims for reimbursement is at least $25.00.

**6.6 Reimbursements After Termination**

When a Participant ceases to be a Participant under Section 3.3, the Participant's Salary Reductions will terminate, as will his election to receive reimbursements. The Participant will not be able to receive reimbursements for Medical Care Expenses incurred after his participation terminates. However, such Participant (or the Participant's estate) may claim reimbursement for any Medical Care Expenses incurred during the period of coverage prior to termination, provided that the Participant (or the Participant's estate) files a claim by April 15 following the close of the Plan Year in which the expense arose.
To the extent required by federal law (COBRA) (see, e.g., Code § 4980B), a Participant, and the Participant's Spouse and Dependents, whose coverage terminates under the Medical Reimbursement Component of this Plan because of a COBRA qualifying event, shall be given the opportunity to continue coverage under this Plan if the balance of the annual election amount is received by the Administrator under one of the following methods:

- deduction on a pretax basis from any amounts due the Employee for unused annual and/or sick leave balances;

- payment of full remaining amount of the election by personal check at the time of termination; or,

- equal monthly payments such that the balance of the annual election is paid over the remaining months of the Plan Year.

If COBRA is elected, it will be available only for the year in which the qualifying event occurs; such COBRA coverage for the Medical Reimbursement Component will cease at the end of the year and cannot be continued for the next plan year.

**ARTICLE VII - DEPENDENT CARE COMPONENT**

**7.1 Benefits**

An election to participate in this Plan is an election to receive benefits in the form of reimbursements for Eligible Employment-Related Expenses, and to pay the premium for such benefits via Salary Reductions.

**7.2 Maximum and Minimum Benefits**

The maximum annual benefit amount that a Participant may elect to receive under this Plan in the form of reimbursements for Eligible Employment-Related Expenses incurred in any Plan Year shall be $5,000 ($2,500 if married and filing separately). The minimum annual benefit amount that a Participant may elect to receive under this Plan in the form of reimbursements for Eligible Employment-Related Expenses incurred in any Plan Year shall be $60. For subsequent Plan Years, the elected annual benefit amount will be carried forward by the Administrator and shall be in effect for the subsequent Plan Year unless the election amount is changed by the Participant during the Open Enrollment Period.

**7.3 Benefit Premiums; Salary Reduction Contributions**

The annual contribution for a Participant's benefits is equal to the annual benefit amount elected by the Participant (for example, if the maximum $5,000 annual benefit amount is elected, the annual premium amount is also $5,000). The Salary Reduction for each pay period for a Participant is an amount equal to the annual premium divided by the number of pay periods in the Plan Year, or an amount otherwise mutually agreed upon. Salary Reductions are applied by the Employer to pay for the premium for the Participant's benefits, and, for the purposes of this Plan, they are considered Employer contributions.

**7.4 Irrevocability of Election; Changes in Status**
Except as provided in this Section 7.4, a Participant's election to participate in the Dependent Care Component of this Plan is irrevocable for the duration of the Plan Year to which it relates. In other words, the Participant may not change any elections for the duration of the Plan Year regarding:

- participation in this Plan;
- Salary Reduction amounts; or
- election of particular component Plan benefits.

The exceptions to the irrevocability requirement, which would permit a Participant to make a mid-year election change in Salary Reduction amounts for this Dependent Care Component, are as follows:

(a) Change in Status. A Participant may change his election under the Plan upon the occurrence of a Change in Status, but only if such change is made on account of, and is consistent with, the Change in Status. The Administrator (in its sole discretion) shall determine whether a requested change is on account of and is consistent with a Change in Status.

(b) Significant Change in Health Coverage Attributable to Spouse's Employment. A Participant may change his election where there has been a significant change in the coverage of the Participant or the Participant's Spouse attributable to the Spouse's employment. Such change is allowed only if the change is on account of and is consistent with the significant change in coverage attributable to the Spouse's employment. The Administrator (in its sole discretion) shall determine whether a requested change is on account of and is consistent with a significant change in coverage attributable to a Participant's Spouse's employment.

(c) Significant Change in Cost or Coverage. A Participant may change his election if any independent, third-party provider (who is not a "relative" of the Participant within the meaning of Prop. Treasury Regulation 1.125-4(f)(2)(iii)) of dependent care previously elected by the Participant either increases the cost for such services, or significantly curtails the services available, during the Plan Year coverage period.

(d) An Employee or Participant entitled to make a new election under this Section must do so within 31 days of the event. All election changes shall be effective no sooner than the first day of the month following the date on which the Participant files the new Salary Reduction Agreement with the Administrator and the proper Salary Reductions for the election have been made. Elections made pursuant to this Section shall be effective for the balance of the Plan Year in which the election is made, unless a subsequent event (described above) allows a further election change.

No Participant shall be allowed to reduce his election for Dependent Care Component benefits to a point where the annualized contribution for such benefit is less than the amount already reimbursed (see Section 9.1). In addition, any change in an election affecting annual Plan contributions to the Dependent Care Component pursuant to this Section also will change the maximum reimbursement benefit for the period of coverage remaining in the Plan Year. The maximum reimbursement benefit for the period of coverage following an election change shall be calculated by adding the balance (if any) remaining in the Participant's Dependent Care Reimbursement Account as of the end of the portion of the Plan Year immediately preceding the
change in election, to the total contributions to such Account scheduled to be made by the
Participant during the remainder of such Plan Year.

7.5 Reimbursement Procedure

(a) Expenses That May Be Reimbursed. Under the Dependent Care Component, a Participant may
receive reimbursement for Eligible Employment-Related Expenses incurred during the Plan Year
for which an election is in force.

(b) Maximum Reimbursement Available. Payment shall be made to the Participant in cash as
reimbursement for Eligible Employment-Related Expenses incurred during the Plan Year for
which the Participant's election is effective, provided that the substantiation requirements of
Section 7.5(e) have been complied with. No payment otherwise due to a Participant hereunder
shall exceed the smallest of:

- the year-to-date amount the Participant has had withheld from his or her Compensation for
dependent care reimbursement for the Plan Year, less any prior dependent care
  reimbursements during the plan year;
- the Participant's Earned Income for the applicable month;
- the Earned Income of the Participant's Spouse for such month (note: a Spouse of a.
  Participant who is not employed during a month in which the Participant incurs Eligible
  Employment-Related Expenses and who is either incapacitated or a Student shall be deemed
to have Earned Income in the amount of $200 per month per Qualifying Individual for whom
the Participant incurs Eligible Employment-Related Expense(s), up to a maximum amount of
$400 per month); or $5,000, or, if the Participant is married and files a separate tax return,
$2,500 (or any future aggregate limitations promulgated under Cod~ § 129) less any prior
reimbursements during the Plan Year.

(c) Timing of Reimbursement. As soon as practicable after the Participant submits a
reimbursement claim to the Administrator, the Employer will reimburse the Participant for his or
her Eligible Employment-Related Expenses (if the Administrator approved the claim), or the
Administrator will notify the Participant that his or her claim has been denied.

(d) Use-It-or-Lose-It Rule. If a Participant does not submit enough expenses to receive
reimbursements for the full amount of coverage elected for a Plan Year, then the excess amount
will be forfeited and applied by the Employer in accordance with Section 9.1.

(e) Applying for Reimbursements. A Participant who has elected to receive dependent care
benefits for a Plan Year may apply for reimbursement by submitting an application in writing to
the Administrator in such form as the Administrator may prescribe, during the Plan Year but not
later than by April 15 following the close of the Plan Year in which the expense arose, setting
forth:

- the person or persons on whose behalf Eligible Employment-Related Expenses have been
  incurred;
- the nature of the expenses so incurred;
• the amount of the requested reimbursement; and

• a statement that such expenses have not otherwise been paid and are not expected to be paid through any other source.

The application shall be accompanied by bills, invoices, or other statements from an independent third party showing the amounts of such expenses, together with any additional documentation which the Administrator may request. Except for the final reimbursement claim for a Plan Year, no claim for reimbursement may be made unless and until the aggregate claims for reimbursement is at least $25.00.

7.6 Reimbursements After Termination

When a Participant ceases to be a Participant under Section 3.3, the Participant’s Salary Reductions will terminate, as will his or her election to receive reimbursements. However, the Participant will be able to receive reimbursements for Eligible Employment-Related Expenses incurred during the Plan Year after his or her participation terminates, so long as the claims for reimbursements are submitted by April 15 following the end of the Plan Year in which the expense arose.

ARTICLE VIII - APPEALS PROCEDURE

8.1 Procedure If Benefits Are Denied Under This Plan

If a claim for reimbursement under this Plan is wholly or partially denied—notice of the decision shall be furnished to the claimant within a reasonable period of time, not to exceed 90 days after receipt of the claim by the Administrator unless special circumstances require an extension of time for processing the claim. If such an extension of time is required, then written notice of the extension shall be furnished to the claimant prior to the termination of the initial 90-day period. In no event shall such extension exceed a period of 90 days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date on which the Administrator expects to render a decision.

The written notice referred to in the above paragraph shall set forth in a manner calculated to be understood by the claimant, and shall include the following:

• a specific reason or reasons for the denial;

• specific reference to pertinent Plan provisions upon which the denial is based;

• a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary; and an explanation of this Plan's claims review procedure, as set forth in Section 8.2.

8.2 Appeals by Participant

The purpose of the review procedure set forth herein is to provide a procedure by which a claimant under this Plan, may have reasonable opportunity to appeal a denial of a claim under this Plan to the Administrator for a full and fair review. To accomplish that purpose, the claimant (or
the claimant's duly authorized representative) may request a review upon written application to the Administrator, review pertinent Plan documents and submit issues and comments in writing.

8.3 Decision upon Appeal

A Participant, who desires to contest a decision by the Administrator regarding benefits under this Plan may file an appeal with the Administrator in accordance with this section.

(1) The Participant must request a reconsideration of a decision or intended decision in writing to the Administrator.

(2) The Administrator, after reconsideration, will provide a written notice to the Participant of the Administrator's decision or intended decision.

(3) Participants whose substantial interests have been or will be determined by the Administrator, and who desires to contest the decision or intended decision pursuant to Chapter 120, Florida Statues, shall submit a petition for an administrative hearing that complies with Rule 60-4.012, Florida Administrative Code. Such petition must be received by the department within twenty-one (21) calendar days after notice of the decision or intended decision is received by the enrollee. Petitions shall be sent to:

   Hearings Coordinator
   Office of the General Counsel
   Department of Management Services
   Division of State Group Insurance
   4050 Esplanade Way, Suite 260
   Tallahassee, FL 32399-0950

(4) Participants who dispute the facts upon which the department's decision is based, shall submit a request for formal hearing that sets forth the facts in dispute and complies with the requirements of Rule 28-201, Florida Administrative Code.

(5) Participants who do not dispute the facts upon which the Administrator's decision is based, shall submit a request for an informal hearing that complies with the requirements of Rule 28-301, Florida Administrative Code.

ARTICLE IX - RECORDKEEPING AND ADMINISTRATION

9.1 Establishment of Accounts

The Administrator will establish and maintain a Medical Reimbursement Account with respect to each Participant who has elected to participate in the Medical Reimbursement Component of the Plan, and will establish and maintain a Dependent Care Reimbursement Account with respect to each Participant who has elected to participate in the Dependent Care Component of the Plan, but will not create a separate fund or otherwise segregate assets for this purpose. The accounts so established will be merely recordkeeping accounts with the purpose of keeping track of contributions and determining forfeitures under subsection (c) below.

(a) Crediting of Accounts. A Participant's Medical Reimbursement Account and Dependent Care Reimbursement Account will be credited periodically during each Plan Year with an amount
equal to the Participant's Salary Reductions elected by Participants to be allocated to the respective accounts.

(b) Debiting of Accounts. A Participant's Medical Reimbursement Account and Dependent Care Reimbursement Account will be debited during each Plan Year for any reimbursement of Medical Care Expenses and Eligible Employment-Related Expenses respectively incurred during the Plan Year.

(c) Forfeiture of Accounts. If any balance remains in the Participant's Medical Reimbursement Account or Dependent Care Reimbursement Account for a Plan Year after all reimbursements have been made for the Plan Year, such balance shall not be carried over to reimburse the Participant for Medical Care Expenses and Eligible Employment-Related Expenses incurred during a subsequent Plan Year. The Participant shall forfeit all rights with respect to such balance. All forfeitures under this Plan shall be used first to offset any losses experienced by the Employer during the Plan Year as a result of making reimbursements (i.e., providing benefits) with respect to any Participant in excess of the premiums paid by such Participant via salary reductions; and second, to reduce the Employer's cost of administering this Plan during the Plan Year (all such administrative costs shall be well documented by the Administrator); and third, to provide increased benefits or compensation to Participants in subsequent years in any fashion the Administrator deems appropriate, consistent with Prop. Treas. Reg. § 1.125-2, QIA-7(b)(7) or other similar guidelines. As described in Section 6.5(b), the amount available for reimbursement of Medical Care Expenses is the Participant's aIUua.l benefit amount, reduced by prior Plan Year reimbursements; it is not based on the amount credited to the Account at a particular point in time. Thus, a Participant's Medical Reimbursement Account may have a negative balance during a Plan Year, but any such negative amount shall never exceed the maximum dollar amount of benefits under this Plan elected by the Participant. By contrast, as described in Section 7.5(b), the amount available for reimbursement of Eligible Employment-Related Expenses is limited to the amount actually credited to the Participant's Dependent Care Reimbursement Account.

9.2 Plan Administrator

The administration of this Plan shall be under the supervision of the Administrator. It is the principal duty of the Administrator to see that this Plan is carried out, in accordance with its terms, for the exclusive benefit of persons entitled to participate in this Plan without discrimination among them.

9.3 Powers of the Administrator

The Administrator shall have such duties and powers as it considers necessary or appropriate to discharge its duties hereunder, including (but not limited to) the following discretionary authority:

(a) to construe and interpret this Plan and to decide all questions of fact, questions relating to eligibility and participation, and questions of benefits under this Plan;

(b) to prescribe procedures to be followed and the forms to be used by Employees and Participants to make elections pursuant to this Plan;

(c) to prepare and distribute information explaining this Plan and the benefits Under this Plan in such manner as the Administrator determines to be appropriate;
(d) to request and receive from all Employees and Participants such information as the Administrator shall from time to time determine to be necessary for the proper administration of this Plan;

(e) to furnish each Employee and Participant with such reports with respect to the administration of this Plan as the Administrator determines to be reasonable and appropriate;

(f) to receive, review and keep on file such reports and information concerning the benefits covered by this Plan as the Administrator determines from time to time to be necessary and proper;

(g) to appoint and employ such individuals or entities to assist in the administration of this Plan as it determines to be necessary or advisable, including legal counsel and benefit consultants;

(h) to sign documents for the purposes of administering this Plan, or to designate an individual or individuals to sign documents for the purposes of administering this Plan; and

(i) to maintain the books of accounts, records, and other data in the manner necessary for proper administration of this Plan and to meet any applicable disclosure and reporting requirements.

9.4 Election Modifications Required by Administrator

The Administrator may, at any time, require any Participant or class of Participants to amend the amount of their Salary Reductions for a Plan Year if the Administrator determines that such action is necessary or advisable in order to:

(a) satisfy any Code's nondiscrimination requirements applicable to this Plan or other cafeteria plan;

(b) prevent any Employee or class of Employees from having to recognize more income for federal income tax purposes from the receipt of benefits hereunder than would otherwise be recognized;

(c) maintain the qualified status of benefits received under this Plan, or

(d) satisfy Code nondiscrimination requirements or other limitations applicable to the Employer's Code § 401(k) Plans (e.g., Code § 415 limitations).

In the event that contributions need to be reduced for a class of Participants, the Administrator will reduce the Salary Reduction amounts for each affected Participant, beginning with the Participant in the class who had elected the highest Salary Reduction amount, continuing with the Participant in the class who had elected the next highest Salary Reduction amount, and so forth, until the defect is corrected.

9.5 Named Fiduciary

The Administrator shall be the named fiduciary responsible for the Plan. The Administrator may, however, delegate any of its powers and duties in writing to any person or entity. The delegate shall be the fiduciary for only that part of the administration which has been delegated by the Administrator and any reference to the Administrator shall instead apply to the delegate. However, if the Administrator assigns any of the Administrator's responsibilities to an Employee,
it will not be considered a delegation of the Administrator's responsibility but rather how the Administrator internally is assigned responsibility.

ARTICLE X – GENERAL PROVISIONS

10.1 Expenses

All administrative costs shall be borne by the Employer.

10.2 Funding this Plan

All of the amounts payable under this Plan shall be paid from the assets of the Employer. Nothing herein will be construed to require the Employer or the Administrator to maintain any fund or to segregate any amount for the benefit of any Participant, and no Participant or other person shall have any claim against, right to, or security or other interest in any fund, account or asset of the Employer from which any payment under this Plan may be made. There is no trust or other fund from which benefits are paid. While the employer has complete responsibility for the payment of benefits out of its general assets, it may hire an outside paying agent to make benefit payments on its behalf.

10.3 No Contract of Employment

Nothing herein contained is intended to be or shall be construed as constituting a contract or other arrangement between any Employee and the Employer to the effect that the Employee will be employed for any specific period of time. All Employees are considered to be employed at the will of the Employer.

10.4 Amendment and Termination

This Plan has been established with the intent of being maintained for an indefinite period of time. Nonetheless, the Employer or Administrator may amend or terminate this Plan at any time, and any such amendment or termination will automatically apply to the related employers that are participating in this Plan.

10.5 Governing Law

This Plan shall be construed, administered and enforced according to the laws of the State of Florida, to the extent not superseded by the Code ERISA or other federal law.

10.6 No Guarantee of Tax Consequences

Neither the Administrator nor the Employer makes any commitment or guarantee that any amounts paid to or for the benefit of a Participant under this Plan will be excludable from the Participant's gross income for federal or state income tax purposes.

10.7 Non-Assignability of Rights

The right of any Participant to receive any reimbursement under this Plan shall not be alienable by the Participant by assignment or any other method, and will not be subject to be taken by the Participant's creditors by any process whatsoever. Any attempt to cause such right to be so subjected will not be recognized, except to such extent as may be required by law.
10.8 Gender; Singular and Plural References

A pronoun or adjective in the masculine gender includes the feminine and singular includes the plural, unless the context clearly indicates otherwise.
ADOPTION OF STATE OF FLORIDA
SALARY REDUCTION CAFETERIA PLAN
FLORIDA GULF COAST UNIVERSITY

WHEREAS, the State of Florida Department of Management Services, Division of State Group Insurance (the “Division”) maintains and administers the State of Florida Salary Reduction Cafeteria Plan (the “Cafeteria Plan”), which includes a premium payment feature, a medical reimbursement component, and a dependent care component, for eligible employees of the State; and

WHEREAS, employees of Florida Gulf Coast University (the “University”) currently participate in the Cafeteria Plan; and

WHEREAS, effective January 7, 2003, the University’s Board of Trustees was incorporated by statute as a public corporation and instrumentality of the State; and

WHEREAS, after such incorporation, University employees will continue for some period to be compensated through the State payroll and the Division will continue to provide them with State benefits and include them in the Cafeteria Plan; and

WHEREAS, given ambiguities in the applicable legislation, it is not entirely clear that University employees will remain “Employees”, as defined by the Cafeteria Plan, after January 6, 2003; and

WHEREAS, the University wished to make clear that the Cafeteria Plan continues to cover its eligible employees;

NOW, THEREFORE, effective January 7, 2003:

1. The University hereby adopts the Cafeteria Plan and agrees to its terms and conditions as currently in effect and as may be amended by the State or the Division from time to time. The University also adopts, and agrees to the terms of, each Health Insurance Plan, Life Insurance Plan, and Supplements Plan (as defined in the Cafeteria Plan).
2. The University shall continue to be included within the defined term “Employer” under the Cafeteria Plan.

3. The University’s employees shall continue to be treated as employees of a “branch or agency of Florida government” for purposes of the Cafeteria Plan.

4. The University’s employees who participate in the Cafeteria Plan shall continue to participate, and their elections and accounts shall continue in effect, subject to the terms of the Cafeteria Plan.

This Cafeteria Plan Adoption has been executed in the University’s name and behalf by its duly authorized officer on the date set forth below.

By: ______________________
Curtis Bullock, Vice President
Administrative Affairs

____________________________________
Date
Florida Gulf Coast University Board of Trustees
April 10, 2003

SUBJECT: FGCU Board of Trustees Bylaws

PROPOSED BOARD ACTION

Adopt revised FGCU Board of Trustees Bylaws

BACKGROUND INFORMATION

The Board of Trustees originally adopted its bylaws in September 2001, and they were revised in April 2002. The passage of Section 7, Article IX of the Florida Constitution, entitled State University System, which was approved in the November 2002 general election as Constitutional Amendment 11, effective January 7, 2003, requires the adoption of revised bylaws by the Board of Trustees.

The title of the document has been changed to “bylaws” rather than “practices and procedures” to conform to the university’s corporate governance model. The quotations from Chapter 229, Florida Statutes, have been deleted. Other changes were made for clarification, to reflect past actions of the Board or to reflect current Board operations. An executive summary of these changes is enclosed.

For purposes of convenience, two versions of the proposed revised bylaws are provided with this agenda item: A marked up version illustrating the changes and a clean version incorporating the changes. In the event of an inadvertent conflict between the two versions, the clean version of the bylaws will govern.

Supporting Documentation Included: (1) Executive Summary of Substantive Changes, (2) Marked-Up Version of Revised Bylaws, and (3) Clean Version of Revised Bylaws
Prepared by: Wendy Morris, General Counsel

Legal Review by: N/A

Submitted by: Wendy Morris, General Counsel
Executive Summary
Proposed Substantive Amendments to Bylaws

Article I, Organization

- Incorporates the Board of Trustees
- Summarizes the Board’s powers and immunities under Florida Law

Article 2, Trustees

- Describes the method and terms of appointment for trustees
- Provides that the faculty senate president is a trustee
- Clarifies that trustees will continue to hold office until successors are appointed
- Provides that the chair of the FGCU Foundation is a non-voting ex officio trustee and that the Foundation Chair or designee will attend Board meetings except executive sessions

Article 3, Officers

- Designates the President/Corporate Secretary as an officer of the corporation
- Specifies that a vacancy in an officer position may be filled at any time by a majority vote of the trustees
- Clarifies that the Chair and Vice-Chair may serve two consecutive two-year terms
- Provides that officers will continue to hold office until successors are appointed
- Provides that the Chair will appoint a representative to each direct support organization’s board of directors and its executive committee as required by the new university rule on direct support organizations

Article 4, Meetings

- Changes the timing of the annual meeting from the first to the last regular meeting of a fiscal year to comport with current Board practices
- Provides that the Board may hold meetings in closed executive session where allowed by law to include discussing litigation, collective bargaining and risk management
- Prohibits the use of proxies for purposes of determining a quorum or voting

Article 5, Agenda

- Clarifies the process for creating and presenting the meeting agenda
Article 6, Appearances before the Board

- No substantive changes

Article 7, Committees

- Clarifies that no committee has the power to bind the Board to any policy or action unless specifically granted such authority by the Board

Article 8, Committee Meetings

- No substantive changes

Article 9, Communications Policy

- No substantive changes

Article 10, Miscellaneous

- Provides that trustees stand in a fiduciary relationship to the University and that the Board will adopt an Ethics policy which shall be reviewed and updated periodically
- Creates a procedure for suspension of the bylaws in connection with the consideration of a particular matter before the Board
- Specifies that the Chair, President or General Counsel may accept service of process on behalf of the Board
- Incorporates the Board’s previous action of adopting a corporate seal into the bylaws and designates appropriate uses for the corporate seal
FLORIDA GULF COAST UNIVERSITY  
BOARD OF TRUSTEES  
BYLAWS INTERIM PRACTICES AND PROCEDURES

I. Organization

The Florida Gulf Coast University Board of Trustees (“the Board”) is established as a body corporate, with all of the powers of a body corporate as provided by Florida law. The Board is vested with the authority to administer Florida Gulf Coast University (“University” or “FGCU”) in accordance with the Florida Constitution, Florida law and delegation of the Florida Board of Governors. The Board is a corporation primarily acting as an instrumentality of the State of Florida pursuant to Section 768.28(2), Florida Statutes, for purposes of sovereign immunity.

II. Trustees

A. The Board is composed of thirteen (13) trustees, six appointed by the Governor, five appointed by the Board of Governors, one member who is the president of the Faculty Senate and one member who is the president of the Student Government Association. Trustees who are appointed by the Governor and the Board of Governors shall be appointed for staggered five-year terms and are subject to confirmation by the Florida Senate. The presidents of the Faculty Senate and Student Government Association will be appointed each year. Trustees shall continue to hold office until their successors have been appointed.

B. The Chair of the Florida Gulf Coast University Foundation, Inc., a direct support organization, serves as a non-voting ex officio trustee of the Board. The Foundation Chair or designee will attend all meetings of the Board except closed executive sessions.

III. Officers

A. The corporate officers of the Board of Trustees (“the Board”) of Florida Gulf Coast University (“FGCU” or “the University”) are the Chair, and the Vice-Chair, and the University President (“President”) who serves as the Chief Executive Officer and Corporate Secretary of the Board. The Chair and Vice-Chair are shall be elected from the appointed members at its the first regularly scheduled meeting after January 7, 2003 July 1. Bi-annually thereafter, the Board shall select the Chair and Vice-Chair at its Annual Meeting. The Chair and Vice-Chair shall serve for two (2) years and may be re-elected to serve one (1) additional consecutive two-year term. Vacancies may be filled at any time by a majority vote of the members of the Board. The Chair and Vice-Chair will continue to hold office until their successors have been elected. Officers may be removed at any time by the affirmative vote of a majority of the members of the Board.
Each board of trustees shall select its chair and vice chair from the appointed members at its first regular meeting after July 1. The chair shall serve for 2 years and may be reselected for one additional consecutive term."

B. The Chair appoints the members of and serves as an ex officio voting member of all committees of the Board. The Chair shall appoint a representative to the governing body and the executive committee of each direct support organization.

"The duties of the chair shall include presiding at all meetings of the board, calling special meetings of the board, attesting to the actions of the board, and notifying the Governor in writing whenever a board member fails to attend three consecutive regular board meetings in any fiscal year, which failure may be grounds for removal."

C. The Vice-Chair performs the duties of the Chair with full authority during the absence or disability of the Chair.

"The duty of the vice chair is to act as chair during the absence or disability of the chair."

D. The University President ("President") serves as the Corporate Secretary of the Board. The President shall be responsible to the Board for all operations of the University and for setting the agenda for meetings of the Board in consultation with the Chair.

"The president is the chief executive officer of the university, shall be corporate secretary of the state university board of trustees, and is responsible for the operation and administration of the university."

"The university president shall serve as executive officer and corporate secretary of the board of trustees and shall be responsible to the board for all operations of the university and for setting the agenda for meetings of the board in consultation with the chair."

II. IV. Meetings

A. Regular Meetings -- At the annual meeting, the Board shall establish a schedule of meetings for the ensuing year which shall provide for a minimum of four regular meetings; at least one scheduled in each quarter of the fiscal year (July 1 - June 30).

B. Annual Meeting -- The annual meeting shall be the last regular meeting scheduled in the fiscal year.

C. Special Meetings -- The Board will meet in special meetings, including hearings and workshops, at a time and place designated by the Chair.
D. Emergency Meetings -- An emergency meeting of the Board may be called by the Chair of the Board upon no less than twenty-four (24) hours notice whenever, in the opinion of the Chair, an issue requires immediate Board action. Whenever such emergency meeting is called, the Chair will notify the President. The Corporate Secretary who will immediately serve either verbal or written notice upon each member of the Board, stating the date, hour and place of the meeting and the purpose for which the meeting has been called. No other business will be transacted at the meeting unless additional emergency matters are agreed to by a majority of those Board members in attendance. The minutes of each emergency meeting will show the manner and method by which notice of such emergency meeting was given to each member of the Board.

E. Meetings of the Board are open to the public and all official acts, other than those exempted by Florida Statutes, shall be taken at public meetings. The schedule of meetings shall be available on the University's website at http://www.fgcu.edu.

F. Executive Sessions -- As provided by law, the Board may conduct closed executive sessions when it meets to consider or discuss such matters as pending litigation, collective bargaining or evaluation of claims filed with a risk management program.

G. Notice of Meetings

1. Notice of regular meetings, committee meetings, and special meetings of the Board will be given not less than seven (7) days before the event and will include a statement of the general subject matter to be considered.

2. Whenever an emergency meeting is scheduled to be held, the Corporate Secretary will notify with a press release all media outlets in the five (5) county FGCU service area, including the time, date, place, and purpose of the meeting.

3. Notwithstanding anything in these bylaws Practices and Procedures to the contrary, all such notice matters shall meet the requirements of Florida law regarding public meetings and public records.

H. Meetings by Means of Telephone Conference Calls and other Communications Media Technology

1. The Board may use telephone conference calls and other communications media technology to conduct Board business in the same manner as if the proceeding were held in person.

2. To attend a meeting of the Board by telephone conference or other means of communications media technology, the member shall provide the President a written request to attend the board meeting by telephone conference or other means of
communications media technology at least thirty (30) days in advance. A member may attend a meeting by telephone conference or other means of communications media technology provided that the member can hear and speak to all other members (allowing for simultaneous transmission). Participation by a member by telephone conference or other means of communications media technology shall constitute attendance in person at the meeting.

3. The Board may participate in and hold a meeting of which all members participating in the meeting can hear and speak to each other (allowing for simultaneous transmission) provided that thirty (30) days notice is given to the President. Participation in such meeting shall constitute attendance in person at the meeting. The notice of any meeting which is to be conducted by means of communication media technology, will state where and how members of the public may gain access to the meeting and such notice shall meet the requirements of paragraph II. F. above.

I. Quorum -- A majority of the Seven (7) members of the Board must be present and voting to constitute a quorum for the transaction of business. No business will be transacted without an affirmative vote of the majority of the members of the Board present at a meeting where a quorum of the Board is present. The use of proxies for purposes of determining a quorum, for voting or any other purpose is prohibited.

J. Parliamentary rules -- The most recent edition of “Roberts Rules of Order” will be followed in conducting the meetings of the Board, unless otherwise provided by the Board.

III. V. Agenda

A. The President shall prepare the agenda for meetings of the Board in consultation with the Chair. Any request by a trustee to include an item on the agenda shall be made in writing to the President sufficiently in advance of the meeting to permit a determination to be made as to the propriety and practicability of including that item on the agenda. Recommendations to the Board, included in the agenda, are presented by the President and include all matters of business or concern to the Board which have not been specifically delegated to the President. In consultation with the Chair, the President will assemble the items received with sufficient time to prepare the agenda in advance of each meeting and provide a copy of the agenda to each member of the Board at least seven (7) days prior to the meeting. If additional items or supporting documentation become available, a supplemental agenda will be provided at least two (2) days prior to the meeting.

B. The agenda for the Board meetings shall be:
1. Opening Remarks by the Chair
2. President's Report
3. Special Reports
4. Academic/Student/Faculty Affairs Committee (Includes Public Input)
5. Administration & Finance Committee (Includes Public Input)
6. Consent Agenda
7. Action Items
8. Old Business
9. New Business
10. Public Comment
11. Closing Remarks by the Chair

C. Upon approval of the Chair, Board committees may bring additional items not included on the published agenda to the full Board meeting.

D. The Board may also consider agenda items, not included in the published agenda, that are emergencies. The agenda item will include a statement of the nature of the emergency requiring Board action. Information relating to an emergency item will be distributed to the Board prior to or at the beginning of the meeting.

IV. VI. Appearances before the Board.

A. The Board will afford to each individual and representatives of groups a reasonable opportunity to be heard on any agenda item being considered by the Board. Public input will be accepted by the Board immediately following committee deliberation on each item and before the committee votes. An individual or representatives of groups may be heard on any specific agenda item being considered by the Board by completing a request form and submitting it to the Board Liaison at any time prior to the Board meeting. The request form will include the individual's name, address, and agenda item to be addressed. Speaker's comments will be subject to a three (3) minute maximum time limitation. Speakers shall confine their remarks only to the agenda item being addressed. If it appears that there are more speakers desiring to speak than may be accommodated, the Board may reduce the maximum amount of time allowed each speaker, or limit the number of speakers that may address an agenda item or topic. In order to proceed with the essential business of the Board in an orderly manner, any speaker who attempts to disrupt a Board meeting will be subject to appropriate action (including removal) pursuant to law.

B. An individual or group representative who desires to speak during the period of public comment or submit an item on the Board's agenda concerning a subject within the Board's jurisdiction must submit a written request to the President, 10501 FGCU Blvd., Fort Myers, FL, 33965-6565. The written requests must state the individual's name, address, the item that they would like the Board to consider placing on
the agenda, and the reasons thereof. Requests received later than twenty-one (21) days before the meeting may be deferred to the next meeting. The President in consultation with the Chair will determine whether the item will be heard and when the item will be heard. The Board may decline to hear any matter determined by it to be outside its jurisdiction.

VII. Committees.

A. The Administration & Finance Committee shall review and recommend for consideration by the Board policies related to the administrative functions of the University. The Chair of the Board shall appoint any number of members to the Administration & Finance Committee and designate one (1) to serve as the Committee Chair. The Vice President of Administrative Services shall serve as a non-voting ex officio member of the Administration & Finance Committee.

B. The Academic/Student/Faculty Affairs Committee shall review and recommend for consideration by the Board policies related to the academic functions of the University. The Chair of the Board shall appoint any number of members to the Academic/Student/Faculty Affairs Committee and designate one (1) to serve as the Committee Chair. The Provost shall serve as a non-voting ex officio member of the Academic/Student/Faculty Affairs Committee.

C. The Chair of the Board may establish additional ad hoc committees as deemed necessary for the orderly conduct of the business of the Board. In addition, the Chair of the Board may appoint to any standing or ad hoc committee (including the Administration & Finance Committee and the Academic/Student/Faculty Affairs Committee) one or more non-voting ex officio member(s), who shall serve on said committee(s) for a term designated by the Chair of the Board, or if no term is designated until removed by the Chair of the Board. Appointment and removal of non-voting ex officio members of a committee, unless otherwise required under these bylaws, Practices and Procedures, shall be in the Chair of the Board’s sole discretion.

D. Authority – No committee has the power or authority to commit the Board to any policy or action unless specifically granted such power or authority by the Board. Committee Chairs will report committee action as a recommendation for consideration and action by the Board. If the Board, however, authorizes a committee to act on a matter referred to it, the Committee Chair of the committee will report the action taken to the Board at its next scheduled meeting.

E. In the event the full Board is serving on any committee, the action of the committee by a majority of the committee members where a quorum is present shall constitute the action of the Board without further action.

VIII. Committee Meetings.
A. Any committee of the Board may meet upon call of its Chair to carry out its duties and responsibilities. Meetings shall be noticed under the procedures established for the University Board of Trustees.

B. Quorum -- A majority of the members of a committee must be present and voting to constitute a quorum for the transaction of business.

C. Persons desiring to appear before a committee of the Board shall make such written request to the Board Liaison, Florida Gulf Coast University, 10501 FGCU Blvd., Fort Myers, FL, 33965-6565 following the procedure specified for Board meetings in paragraph IV. A. above.

D. Persons desiring to place an new item before a committee shall make such a written request to the President, Florida Gulf Coast University, 10501 FGCU Blvd., Fort Myers, FL, 33965-6565 following the procedure specified for Board meetings in paragraph IV. B. above.

VII. IX. Communications Policy.

A. Communication with Board -- It is the policy of the Board that there shall be a useful exchange of information between the Board and the various constituencies served by the University. The purpose of this policy is to enable the Board to make informed judgments in taking actions that affect the governance of the University. To this end, the University President, as chief executive officer, is charged with the responsibility of maintaining communication between the Board and the various University constituencies, including students, faculty, staff, alumni and others, as appropriate.

B. The University President is expected to inform the Board in an accurate and timely fashion of the views of various University constituencies and to apprise and educate the Board concerning significant issues, opportunities, achievements, and concerns that have or will confront the University and those constituencies. To aid in that process, the University President is encouraged to invite other members of the University community to attend and participate in meetings of the Board or its committees. The University President, in choosing representatives of constituencies to participate in meetings, may select representatives from existing support organizations now serving the University, such as: Faculty Senate, Student Government Association, Staff Advisory Council, Alumni Association, and the Florida Gulf Coast University Foundation. In addition, when relevant and appropriate, the University President may, from time to time, arrange for other informed students, faculty, staff, alumni, benefactors, and interested parties to present views to the Board or its committees.

C. Spokesperson for the Board -- The Board’s designated spokesperson shall be its duly elected chair, or if delegated by the chair, its vice
chair. Individual Board member may speak as such to the public and media, but speaking for the Board is the responsibility of the chair.

D. Any public records requests made of the Board are to be directed to the University President or his designee, in accordance with Florida’s statutorily-defined terms and provisions related to records of public entities. The University President or his designee will inform the Board of any such request, and provide copies of responses as applicable.

VIII. X. Miscellaneous Provisions.

A. Amendments—These bylaws, practices and procedures may be altered, amended, or repealed by the affirmative vote of a majority of the Board members voting in any regular or special meeting having a quorum.

B. Indemnification-- FGCU shall indemnify, defend, and hold harmless each member of the Board of and from any and all claims, demands, civil or criminal actions, rights, defenses, counterclaims, proceedings, administrative actions, agreements, contracts, covenants, accounts, offsets, attorneys’ fees, costs, damages, liabilities, losses, expenses, suits, debts, judgments, awards, duties, or obligations, of any nature whatsoever, at law or in equity (collectively referred to as “Claims”), that arise from or relate in any way to his or her position on the Board, or any act undertaken or omitted in connection with his or her service as a member of the Board. At the direction of the Board, FGCU may procure and may maintain, at FGCU’s expense, adequate insurance coverage, including separate Directors and Officers (“D&O”) coverage, for the defense and payment of any such Claims.

[§ 229.008(8), Fla. Stat. (2001). “Whenever any civil action has been brought against any member of a university board of trustees or employee for any act or omission arising out of and in the course if the performance of his or her duties and responsibilities, the university board of trustees may defray all costs of defending such action, including reasonable attorney’s fees and expenses, together with the costs of appeal, and may save harmless and protect such person from any financial loss resulting from the lawful performance of his or her duties and responsibilities. Claims based on such actions or omissions may, in the discretion of the university board of trustees, be settled prior to or after the filing of suit thereon. The board of trustees may arrange and pay for the premium for appropriate insurance to cover all such losses and expenses.”]

Note: The italicized language is for informational purposes only, and not a part of the Practices and Procedures.

C. Ethics Policy – Trustees stand in a fiduciary relationship to the University. Therefore, Trustees shall act in good faith with due regard for the interests of the University and shall be guided by the provisions
set forth in Florida law for the conduct of public officers. The Board shall adopt a written ethics policy that will be reviewed periodically and revised as necessary.

D. Suspension of bylaws – Any provision of these bylaws may be suspended in connection with the consideration of a matter before the Board by a majority vote of the members in attendance.

E. Service of Process – Service of process may be made on the Chair of the Board, the President or the General Counsel.

F. Corporate Seal – The Board’s corporate seal shall be used only in connection with the transaction of business of the Board and the University. The President may affix the seal on any document signed on behalf of the corporation. Permission may be given by the President for the use of the seal in the decoration of any University Building or in other special circumstances. The corporate seal of the Board shall be consistent with the following form and design:

[INSERT COPY OF PREVIOUSLY APPROVED SEAL HERE]
I. Organization

The Florida Gulf Coast University Board of Trustees (“the Board”) is established as a body corporate, with all of the powers of a body corporate as provided by Florida law. The Board is vested with the authority to administer Florida Gulf Coast University (“University” or “FGCU”) in accordance with the Florida Constitution, Florida law and delegation of the Florida Board of Governors. The Board is a corporation primarily acting as an instrumentality of the State of Florida pursuant to Section 768.28(2), Florida Statutes, for purposes of sovereign immunity.

II. Trustees

A. The Board is composed of thirteen (13) trustees, six appointed by the Governor, five appointed by the Board of Governors, one member who is the president of the Faculty Senate and one member who is the president of the Student Government Association. Trustees who are appointed by the Governor and the Board of Governors shall be appointed for staggered five-year terms and are subject to confirmation by the Florida Senate. The presidents of the Faculty Senate and Student Government Association will be appointed each year. Trustees shall continue to hold office until their successors have been appointed.

B. The Chair of the Florida Gulf Coast University Foundation, Inc., a direct support organization, serves as a non-voting ex officio trustee of the Board. The Foundation Chair or designee will attend all meetings of the Board except closed executive sessions.

III. Officers

A. The corporate officers are the Chair, the Vice-Chair, and the University President (“President”) who serves as the Chief Executive Officer and Corporate Secretary of the Board. The Chair and Vice-Chair shall be elected from the appointed members at the first meeting after January 7, 2003. Bi-annually thereafter, the Board shall select the Chair and Vice-Chair at its Annual Meeting. The Chair and Vice-Chair shall serve for two (2) years and may be re-elected to serve one (1) additional consecutive two-year term. Vacancies may be filled at any time by a majority vote of the members of the Board. The Chair and Vice-Chair will continue to hold office until their successors have been elected. Officers may be removed at any time by the affirmative vote of a majority of the members of the Board.
B. The Chair appoints the members of and serves as an ex officio voting member of all committees of the Board. The Chair shall appoint a representative to the governing body and the executive committee of each direct support organization.

C. The Vice-Chair performs the duties of the Chair with full authority during the absence or disability of the Chair.

D. The President serves as the Corporate Secretary of the Board. The President shall be responsible to the Board for all operations of the University and for setting the agenda for meetings of the Board in consultation with the Chair.

IV. Meetings

A. Regular Meetings -- At the annual meeting, the Board shall establish a schedule of meetings for the ensuing year which shall provide for a minimum of four regular meetings; at least one scheduled in each quarter of the fiscal year (July 1 - June 30).

B. Annual Meeting -- The annual meeting shall be the last regular meeting scheduled in the fiscal year.

C. Special Meetings -- The Board will meet in special meetings, including hearings and workshops, at a time and place designated by the Chair.

D. Emergency Meetings -- An emergency meeting of the Board may be called by the Chair of the Board upon no less than twenty-four (24) hours notice whenever, in the opinion of the Chair, an issue requires immediate Board action. Whenever such emergency meeting is called, the Chair will notify the President who will immediately serve either verbal or written notice upon each member of the Board, stating the date, hour and place of the meeting and the purpose for which the meeting has been called. No other business will be transacted at the meeting unless additional emergency matters are agreed to by a majority of those Board members in attendance. The minutes of each emergency meeting will show the manner and method by which notice of such emergency meeting was given to each member of the Board.

E. Meetings of the Board are open to the public and all official acts, other than those exempted by Florida Statutes, shall be taken at public meetings. The schedule of meetings shall be available on the University's website at http://www.fgcu.edu.

F. Executive Sessions -- As provided by law, the Board may conduct closed executive sessions when it meets to consider or discuss such matters as pending litigation, collective bargaining or evaluation of claims filed with a risk management program.
G. Notice of Meetings

1. Notice of regular meetings, committee meetings, and special meetings of the Board will be given not less than seven (7) days before the event and will include a statement of the general subject matter to be considered.

2. Whenever an emergency meeting is scheduled to be held, the Corporate Secretary will notify with a press release all media outlets in the five (5) county FGCU service area, including the time, date, place, and purpose of the meeting.

3. Notwithstanding anything in these bylaws to the contrary, all such notice matters shall meet the requirements of Florida law regarding public meetings and public records.

H. Meetings by Means of Telephone Conference Calls and other Communications Media Technology

1. The Board may use telephone conference calls and other communications media technology to conduct Board business in the same manner as if the proceeding were held in person.

2. To attend a meeting of the Board by telephone conference or other means of communications media technology, the member shall provide the President a written request to attend the board meeting by telephone conference or other means of communications media technology at least thirty (30) days in advance. A member may attend a meeting by telephone conference or other means of communications media technology provided that the member can hear and speak to all other members (allowing for simultaneous transmission). Participation by a member by telephone conference or other means of communications media technology shall constitute attendance in person at the meeting.

3. The Board may participate in and hold a meeting of which all members participating in the meeting can hear and speak to each other (allowing for simultaneous transmission) provided that thirty (30) days notice is given to the President. Participation in such meeting shall constitute attendance in person at the meeting. The notice of any meeting which is to be conducted by means of communication media technology, will state where and how members of the public may gain access to the meeting and such notice shall meet the requirements of paragraph II. F. above.
I. Quorum -- Seven (7) members of the Board must be present and voting to constitute a quorum for the transaction of business. No business will be transacted without an affirmative vote of the majority of the members of the Board present at a meeting where a quorum of the Board is present. The use of proxies for purposes of determining a quorum, for voting or any other purpose is prohibited.

J. Parliamentary rules -- The most recent edition of “Roberts Rules of Order” will be followed in conducting the meetings of the Board, unless otherwise provided by the Board.

V. Agenda

A. The President shall prepare the agenda for meetings of the Board in consultation with the Chair. Any request by a trustee to include an item on the agenda shall be made in writing to the President sufficiently in advance of the meeting to permit a determination to be made as to the propriety and practicability of including that item on the agenda. In consultation with the Chair, the President will assemble the items received with sufficient time to prepare the agenda in advance of each meeting and provide a copy of the agenda to each member of the Board at least seven (7) days prior to the meeting. If additional items or supporting documentation become available, a supplemental agenda will be provided at least two (2) days prior to the meeting.

B. The agenda for the Board meetings shall be:

1. Opening Remarks by the Chair
2. President's Report
3. Special Reports
4. Academic/Student/Faculty Affairs Committee (Includes Public Input)
5. Administration & Finance Committee (Includes Public Input)
6. Consent Agenda
7. Action Items
8. Old Business
9. New Business
10. Public Comment
11. Closing Remarks by the Chair

C. Upon approval of the Chair, Board committees may bring additional items not included on the published agenda to the full Board meeting.

D. The Board may also consider agenda items, not included in the published agenda, that are emergencies. The agenda item will include a statement of the nature of the emergency requiring Board action. Information relating to an emergency item will be distributed to the Board prior to or at the beginning of the meeting.
VI. Appearances before the Board.

A. The Board will afford to each individual and representatives of groups a reasonable opportunity to be heard on any agenda item being considered by the Board. Public input will be accepted by the Board immediately following committee deliberation on each item and before the committee votes. An individual or representatives of groups may be heard on any specific agenda item being considered by the Board by completing a request form and submitting it to the Board Liaison at any time prior to the Board meeting. The request form will include the individual's name, address, and agenda item to be addressed. Speaker's comments will be subject to a three (3) minute maximum time limitation. Speakers shall confine their remarks only to the agenda item being addressed. If it appears that there are more speakers desiring to speak than may be accommodated, the Board may reduce the maximum amount of time allowed each speaker, or limit the number of speakers that may address an agenda item or topic. In order to proceed with the essential business of the Board in an orderly manner, any speaker who attempts to disrupt a Board meeting will be subject to appropriate action (including removal) pursuant to law.

B. An individual or group representative who desires to speak during the period of public comment or submit an item on the Board's agenda concerning a subject within the Board's jurisdiction must submit a written request to the President, 10501 FGCU Blvd., Fort Myers, FL, 33965-6565. The written requests must state the individual's name, address, the item that they would like the Board to consider placing on the agenda, and the reasons thereof. Requests received later than twenty-one (21) days before the meeting may be deferred to the next meeting. The President in consultation with the Chair will determine whether the item will be heard and when the item will be heard. The Board may decline to hear any matter determined by it to be outside its jurisdiction.

VII. Committees.

A. The Administration & Finance Committee shall review and recommend for consideration by the Board policies related to the administrative functions of the University. The Chair of the Board shall appoint any number of members to the Administration & Finance Committee and designate one (1) to serve as the Committee Chair. The Vice President of Administrative Services shall serve as a non-voting ex officio member of the Administration & Finance Committee.

B. The Academic/Student/Faculty Affairs Committee shall review and recommend for consideration by the Board policies related to the academic functions of the University. The Chair of the Board shall
appoint any number of members to the Academic/Student/Faculty Affairs Committee and designate one (1) to serve as the Committee Chair. The Provost shall serve as a non-voting ex officio member of the Academic/Student/Faculty Affairs Committee.

C. The Chair of the Board may establish additional ad hoc committees as deemed necessary for the orderly conduct of the business of the Board. In addition, the Chair of the Board may appoint to any standing or ad hoc committee (including the Administration & Finance Committee and the Academic/Student/Faculty Affairs Committee) one or more non-voting ex officio member(s), who shall serve on said committee(s) for a term designated by the Chair of the Board, or if no term is designated until removed by the Chair of the Board. Appointment and removal of non-voting ex officio members of a committee, unless otherwise required under these bylaws, shall be in the Chair of the Board’s sole discretion.

D. Authority – No committee has the power or authority to commit the Board to any policy or action unless specifically granted such power or authority by the Board. Committee Chairs will report committee action as a recommendation for consideration and action by the Board. If the Board, however, authorizes a committee to act on a matter referred to it, the Committee Chair will report the action taken to the Board at its next scheduled meeting.

E. In the event the full Board is serving on any committee, the action of the committee by a majority of the committee members where a quorum is present shall constitute the action of the Board without further action.

VIII. Committee Meetings.

A. Any committee of the Board may meet upon call of its Chair to carry out its duties and responsibilities. Meetings shall be noticed under the procedures established for the University Board of Trustees.

B. Quorum -- A majority of the members of a committee must be present and voting to constitute a quorum for the transaction of business.

C. Persons desiring to appear before a committee of the Board shall make such written request to the Board Liaison, Florida Gulf Coast University, 10501 FGCU Blvd., Fort Myers, FL, 33965-6565 following the procedure specified for Board meetings in paragraph IV. A. above.

D. Persons desiring to place an new item before a committee shall make such a written request to the President, Florida Gulf Coast University, 10501 FGCU Blvd., Fort Myers, FL, 33965-6565 following the procedure specified for Board meetings in paragraph IV. B. above.
IX. Communications Policy.

A. Communication with Board -- It is the policy of the Board that there shall be a useful exchange of information between the Board and the various constituencies served by the University. The purpose of this policy is to enable the Board to make informed judgments in taking actions that affect the governance of the University. To this end, the President, as chief executive officer, is charged with the responsibility of maintaining communication between the Board and the various University constituencies, including students, faculty, staff, alumni and others, as appropriate.

B. The President is expected to inform the Board in an accurate and timely fashion of the views of various University constituencies and to apprise and educate the Board concerning significant issues, opportunities, achievements, and concerns that have or will confront the University and those constituencies. To aid in that process, the President is encouraged to invite other members of the University community to attend and participate in meetings of the Board or its committees. The President, in choosing representatives of constituencies to participate in meetings, may select representatives from existing support organizations now serving the University, such as: Faculty Senate, Student Government Association, Staff Advisory Council, Alumni Association, and the Florida Gulf Coast University Foundation. In addition, when relevant and appropriate, the President may, from time to time, arrange for other informed students, faculty, staff, alumni, benefactors, and interested parties to present views to the Board or its committees.

C. Spokesperson for the Board -- The Board’s designated spokesperson shall be its duly elected chair, or if delegated by the chair, its vice chair. Individual Board member may speak as such to the public and media, but speaking for the Board is the responsibility of the chair.

D. Any public records requests made of the Board are to be directed to the University President or his designee, in accordance with Florida’s statutorily-defined terms and provisions related to records of public entities. The University President or his designee will inform the Board of any such request, and provide copies of responses as applicable.

X. Miscellaneous Provisions.

A. Amendments -- These bylaws may be altered, amended, or repealed by the affirmative vote of a majority of the Board members voting in any regular or special meeting having a quorum.
B. Indemnification -- FGCU shall indemnify, defend, and hold harmless each member of the Board of and from any and all claims, demands, civil or criminal actions, rights, defenses, counterclaims, proceedings, administrative actions, agreements, contracts, covenants, accounts, offsets, attorneys’ fees, costs, damages, liabilities, losses, expenses, suits, debts, judgments, awards, duties, or obligations, of any nature whatsoever, at law or in equity (collectively referred to as “Claims”), that arise from or relate in any way to his or her position on the Board, or any act undertaken or omitted in connection with his or her service as a member of the Board. At the direction of the Board, FGCU may procure and may maintain, at FGCU’s expense, adequate insurance coverage, including separate Directors and Officers (“D&O”) coverage, for the defense and payment of any such Claims.

C. Ethics Policy -- Trustees stand in a fiduciary relationship to the University. Therefore, Trustees shall act in good faith with due regard for the interests of the University and shall be guided by the provisions set forth in Florida law for the conduct of public officers. The Board shall adopt a written ethics policy that will be reviewed periodically and revised as necessary.

D. Suspension of bylaws -- Any provision of these bylaws may be suspended in connection with the consideration of a matter before the Board by a majority vote of the members in attendance.

E. Service of Process -- Service of process may be made on the Chair of the Board, the President or the General Counsel.

F. Corporate Seal -- The Board’s corporate seal shall be used only in connection with the transaction of business of the Board and the University. The President may affix the seal on any document signed on behalf of the corporation. Permission may be given by the President for the use of the seal in the decoration of any University Building or in other special circumstances. The corporate seal of the Board shall be consistent with the following form and design:

[INSERT COPY OF PREVIOUSLY APPROVED SEAL HERE]