Florida Gulf Coast University Board of Trustees
June 20, 2006

SUBJECT: Financing and Construction of Phase VIII Student Housing

PROPOSED BOARD ACTION

Approve: Resolution authorizing the Florida Gulf Coast University Financing Corporation to issue bonds in a principal amount not to exceed $25,000,000 to finance and construct an additional student residence facility and related costs. The facility is located on the Florida Gulf Coast University campus and consists of a new mid-rise student residence, support facilities and related infrastructure.

BACKGROUND INFORMATION

Florida Gulf Coast University currently has 1944 available student housing beds with the completion of Phase VII student housing in August of 2005. With the projected growth of FGCU in the fall of 2006 and 2007, the FGCU Financing Corporation has requested the financing and construction of an additional student residence facility. This phase VIII student housing will begin construction of mid-rise buildings in the south portion of the University campus. The housing system is healthy and the FGCU Financing Corporation believes the expansion of additional student housing facilities into a new student residence village is warranted based upon existing and projected demand. In order to meet future demand, the FGCU Financing Corporation is requesting authority to proceed with financing and construction of Phase VIII student housing and related facilities. The Florida Gulf Coast University Financing Corporation Board of Directors has approved a resolution authorizing the financing and construction of Student Housing Phase VII and related facilities. The FGCU Financing Corporation requests that the FGCU Board of Trustees approve a resolution authorizing the construction of Phase VIII student housing and financing in the amount not to exceed $25,000,000.
Supporting Documentation Included: (1) Resolution by the FGCU Board of Trustees, (2) Amended and Restated Master Capital Projects Ground Lease Agreement, and (3) Amended and Restated Master Capital Projects Operating Lease.

Legal Review by: General Counsel Wendy Morris (June 2, 2006)

Prepared by: FGCU Financing Corporation Executive Director Curtis Bullock

Submitted by: Vice President for Administrative Services Joe Shepard
A RESOLUTION REQUESTING THE FLORIDA GULF COAST UNIVERSITY FINANCING CORPORATION (THE “FINANCING CORPORATION”) TO FINANCE A NEW STUDENT RESIDENCE FACILITY OF APPROXIMATELY 300 BEDS (PHASE VIII) ON THE CAMPUS OF FLORIDA GULF COAST UNIVERSITY (THE “UNIVERSITY”); APPROVING THE ISSUANCE BY THE FINANCING CORPORATION OF ITS CAPITAL IMPROVEMENT REVENUE BONDS, SERIES 2007A, IN A PRINCIPAL AMOUNT NOT TO EXCEED $25,000,000; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED CAPITAL PROJECTS MASTER OPERATING LEASE AND AN AMENDED AND RESTATED CAPITAL PROJECTS MASTER GROUND LEASE AGREEMENT RELATING TO THE BONDS; AND PROVIDING AN EFFECTIVE DATE.

At a meeting duly held pursuant to notice and a quorum being present, the Florida Gulf Coast University Board of Trustees (the “University Board”) does hereby make the following resolutions:

WHEREAS, the legislature of the State of Florida has approved the Project (as hereinafter defined) in the General Appropriations Act for fiscal year 200_—200_, Chapter ______________, Laws of Florida.

WHEREAS, the Financing Corporation was incorporated by The Florida Gulf Coast University Board of Trustees (the “University Board”) to provide direct support to Florida Gulf Coast University (the “University”) and designated as a “University Direct Support Organization” by the University Board pursuant to §1004.28, Florida Statutes (2005);

WHEREAS, the University Board desires that the Financing Corporation finance (i) a new student residence facility of approximately 300 beds to be located on the campus of the University; (ii) related capital improvements to the University’s existing housing system; (iii) a food service facility to be located on the campus of the University (collectively with capitalized interest and costs relating to issuance of its bonds, the “Project”); and

WHEREAS, to provide for the financing of University capital projects from time to time, the University Board desires to amend the (i) Amended and Restated Master Ground Lease Agreement, dated as of January 1, 2005, between the University Board, successor by assignment, acting for and on behalf of the University, and the Financing Corporation, successor by assignment, as heretofore amended and supplemented (collectively, the “Prior Master Ground Lease”), through the execution and delivery of a new Amended and Restated Master Capital Projects Ground Lease Agreement (the “Master Ground Lease Agreement”), between the
University Board, acting for and on behalf of the University, and the Financing Corporation and (ii) Amended and Restated Master Operating Lease, dated as of January 1, 2005, between the University Board, successor by assignment, acting for and on behalf of the University, and the Financing Corporation, successor by assignment, as heretofore amended and supplemented (collectively, the “Prior Master Operating Lease”), through the execution and delivery of a new Amended and Restated Master Capital Projects Operating Lease (the “Master Operating Lease Agreement”), between the University Board, acting for and on behalf of the University, and the Financing Corporation (collectively, the “Financing Documents”).

NOW THEREFORE, BE IT RESOLVED:

Section 1. Approval of Bonds, Financing Plan and Request to the Financing Corporation. The University Board hereby approves the issuance of bonds by the Financing Corporation in an amount not to exceed $25 million to finance the Project and hereby requests the Financing Corporation to consummate the transactions described in this resolution and the Financing Documents.

Section 2. Authorization of Execution and Delivery of the Financing Documents.

A. The University Board authorizes the amendment of the Prior Master Ground Lease through the execution and delivery of the Master Ground Lease Agreement, in substantially the form attached hereto as Exhibit “A”, with such changes, alterations and corrections as may be approved by the President of the University as Corporate Secretary of the University Board, such approval to be conclusively evidenced by the execution thereof by the President of the University, and such Master Ground Lease Agreement is hereby approved by the University Board, and the University Board hereby authorizes and directs said President to execute the Master Ground Lease Agreement, all of the provisions of which, when executed and delivered by the University Board as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein.

B. The University Board authorizes the amendment of the Prior Master Operating Lease through the execution and delivery of the Master Operating Lease Agreement, in substantially the form attached hereto as Exhibit “B” with such changes, alterations and corrections as may be approved by the President of the University as Corporate Secretary of the University Board, such approval to be conclusively evidenced by the execution thereof by the President of the University, and such Master Operating Lease Agreement is hereby approved by the University Board, and the University Board hereby authorizes and directs said President to execute the Master Operating Lease Agreement, all of the provisions of which, when executed and delivered by the University Board as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein.

Section 3. Authorization of Further Actions Consistent Herewith. The President of the University and such authorized officers of the University are hereby authorized and directed to do all acts and things required of them by this resolution, the Financing Documents, or desirable or consistent with the requirements thereof, for the full, punctual and complete performance of all the
terms, covenants and agreements contained in the Bonds, the Financing Documents, and this resolution including execution of such documents, certificates, contracts and legal opinions, in such form and content as shall to the President or authorized officers executing the same seem necessary, desirable or appropriate.

Section 4. Repealing Clause. All resolutions of the University Board, or parts thereof, in conflict with the provisions herein contained, to the extent they conflict herewith, are, to the extent of such conflict, hereby superseded and repealed.

Section 5. Effective Date. This resolution shall become effective immediately upon passage.
CERTIFICATE OF THE CORPORATE SECRETARY

The undersigned, Corporate Secretary of The Florida Gulf Coast University Board of Trustees, does hereby certify that the attached resolution is a true and accurate copy as adopted by The Florida Gulf Coast University Board of Trustees on June __, 2006.

THE FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES

Dated: ________________, 2006

By: _______________________
   Corporate Secretary
AMENDED AND RESTATED MASTER CAPITAL PROJECTS GROUND LEASE AGREEMENT

THIS AMENDED AND RESTATED MASTER CAPITAL PROJECTS GROUND LEASE AGREEMENT (herein called the “Master Ground Lease”) is made and entered into this _______ day of __________ 200_, by and between THE FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES, a Florida public corporation (the “University Board” or “Lessor”), acting for and on behalf of FLORIDA GULF COAST UNIVERSITY (the “University”), and FLORIDA GULF COAST UNIVERSITY FINANCING CORPORATION, a Florida not for profit corporation having its principal place of business at 10501 FGCU Boulevard South, Fort Myers, Florida 33965-6565 (the “Financing Corporation” or “Lessee”) (all of the capitalized terms used herein that are undefined shall have the same meanings herein as are assigned to them in the Master Operating Lease, defined herein).

WHEREAS, this Master Ground Lease amends and restates that certain Master Ground Lease Agreement, dated January 1, 2005 (the “Prior Ground Lease”), between the Financing Corporation and the University Board, acting for and on behalf of the University, and contains the original provisions of the Prior Ground Lease as amended and supplemented hereby; and

WHEREAS, the Lessor desires to provide for the operation, financing or refinancing of various capital projects, from time to time, of the University (collectively, the “Capital Project”) to be (a) located on land subleased from the University Board pursuant to this Master Ground Lease, as the same may be amended from time to time and (b) financed from tax-exempt revenue obligations (“Bonds”), issued from time to time by the Lessee which Bonds are secured by the Lessor’s obligations to pay Base Rent (as defined in the Master Operating Lease defined herein) to the Lessee and such Base Rent obligations are secured by and payable solely from Net Revenues (defined in the Master Operating Lease defined herein) derived from the Capital Project Facilities System (defined in the Master Operating Lease defined herein); and

WHEREAS, the Lessee was incorporated by the University Board to provide direct support to the University and designated by the University Board as a “University Direct Support Organization” pursuant to §1004.28, Florida Statutes (2005); and

WHEREAS, the University Board, as lessor, will lease the Land (defined below), the Existing Improvements (defined herein) and any additional improvements thereon to the Financing Corporation, as lessee, for the construction of a Capital Project, pursuant to the terms hereof and such Capital Projects will be specifically identified in a supplement hereeto; and
WHEREAS, the Financing Corporation will lease back the Land, the Existing Improvements, and any additional improvements, from time to time included within the definition of the term Improvements, to the University Board, and the University Board will operate the Capital Project Facilities System (defined below) pursuant to the terms set forth in the Amended and Restated Master Capital Projects Operating Lease, of even date herewith by and between the Lessor and the Lessee (the “Master Operating Lease”); and

WHEREAS, in consideration of the transfers of interest under this Master Ground Lease, the Financing Corporation will construct certain capital projects, from time to time; and

WHEREAS, all of Lessor’s interest in this Master Ground Lease and the Master Operating Lease will be assigned to a trustee (the “Trustee”) under a trust indenture, entered into by Lessor with the Trustee providing for the issuance of and security for the repayment of Bonds.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the parties hereto agree to adopt this Master Ground Lease:

Section 1. Leased Premises and Existing Improvements. Lessor hereby: (a) subleases to Lessee a portion of Lessor’s leasehold interest under a lease agreement for Lease No. 4051, dated November 15, 1994 (the “Lease Agreement”), with the State of Florida Board of Trustees of the Internal Improvement Trust Fund (the “Board of Trustees”), as amended and modified, in that certain real property lying in Lee County, Florida, all as more particularly described in Exhibit “A” attached hereto and made a part hereof by reference (the same constituting the “Leased Premises”), and (b) leases to Lessee all of the Existing Improvements, all of which are located on the main campus of the University. Exhibit “A” may be amended by the Lessor and the Lessee, from time to time, to add additional property under the Lease Agreement to be subleased hereunder.

Section 2. Termination. This Master Ground Lease shall terminate on the later of January 1, 2037 or the date that all Bonds and any obligations under any Related Financing Documents (as defined in the Operating Lease) are fully paid and cancelled. Notwithstanding the foregoing, under no circumstance shall this Master Ground Lease extend beyond the term of Lessor’s Lease Agreement with the Board of Trustees described in Section 1 hereof.

Section 3. Use of Leased Premises.

(a) Capital Project Facilities System. The Leased Premises shall be used by Lessee solely for the purpose of maintaining the Existing Improvements and constructing Capital Projects, from time to time (the “Capital Project Facilities System”), all to be operated and managed by Lessor as a portion of the University’s Master Plan and for no other purpose whatsoever. The University’s Master Plan and any capital project to be incorporated therein shall be as set forth in Exhibit “B” to the Master Operating Lease and any supplements thereto, all of which shall be suitable for use by students, faculty and staff of Lessor. The Capital Projects shall further consist of such other support facilities, necessities and amenities related to such project.
(b) **Compliance with Rules and Regulations.** Lessee shall not use or permit the Leased Premises to be used in violation of any valid present or future laws, ordinances, rules or regulations of any public or governmental authority at any time applicable thereto relating to sanitation or the public health, safety or welfare, or relating to Lessee's construction activities in, and use of, the Leased Premises during construction of all improvements to the Leased Premises and until the issuance of a final certificate of occupancy with respect thereto.

(c) **Commercial Facilities Prohibited.** It is understood and agreed by the parties that no part of the Leased Premises may be used for construction or operation of any commercial facilities whatsoever, provided that concessions, franchises, coin operated equipment and machines of a similar nature such as food, beverage or other vending machines installed and maintained for the convenience of users of the capital project facilities shall not be considered commercial facilities for purposes of this section.

**Section 4. Rental.** During the term of this Master Ground Lease, as provided in Section 2 hereof, rent shall be payable by Lessee to Lessor at the rate of One Dollar ($1.00) per year.

**Section 5. Construction Commencement.**

(a) **Commencement of Construction.** Lessee shall start construction of a Capital Project (and any future campus capital project facilities) within thirty (30) days after final approval by Lessor (and any other parties incidental to financing, construction or design of a Capital Project) of the plans and specifications for all the improvements proposed to be constructed on the Leased Premises.

(b) **Construction Permits and Approvals.** It shall be the responsibility of Lessee, at its sole cost and expense, to obtain any and all governmental permits and approvals required to be obtained by it as a condition precedent to the construction of any improvements on the Leased Premises, Lessor agrees to assist Lessee in obtaining such governmental permits and approvals if Lessee so requests; provided, however, that Lessor shall have no obligation to incur any costs or expenses in connection with the rendering of such assistance. In the event that Lessee deems it necessary or appropriate, through litigation or administrative proceedings, to contest the denial of any approval or permit, or to require the appropriate governmental authority to act with due diligence on Lessee's applications for said approval or permits, it shall obtain the prior written consent of Lessor, which consent Lessor may, in its sole discretion, withhold.

(c) **Lessee's Obligations Prior to Construction.** On or before three (3) days prior to the expiration of the thirty (30) day period referred to in Paragraph (a) of this Section, Lessee shall deliver to Lessor the following:

1. Copies of all insurance policies as reasonably required by Lessor (or written evidence of such coverage acceptable to Lessor) and evidence that the premiums therefor have been paid;
2. If Lessee elects to use a general contractor, a copy of the executed construction contract;

3. Evidence of a payment and performance bond having been issued by a bonding company acceptable to Lessor in the principal amount of 100% of the cost of construction, naming Lessor as obligee and otherwise in form and substance satisfactory to Lessor; and

4. Evidence satisfactory to Lessor that Lessee has obtained all other required governmental approvals and that it has obtained a construction loan and permanent loan commitment or other private financing.

(d) Quality of Construction. Lessee shall construct, or cause to be constructed, all projects expeditiously, in a good, workmanlike manner and substantially in accordance with the approved plans and specifications and any change orders previously authorized by Lessor and Lessee.

(e) Obligation to Furnish. Lessee shall, at its own cost, completely furnish, decorate and equip all projects within forty-five (45) days after completion of construction or the issuance of a final certificate of occupancy, whichever earlier occurs, and shall keep all furniture and equipment installed in good operating condition and repair, to the extent of any warranties furnished by the manufacturer or dealer with respect thereto, throughout the term of this Master Ground Lease, reasonable wear and tear excepted.

Section 6. Ownership of Improvements and Surrender of Leased Premises.

(a) Ownership. Lessee shall at all times during the term of this Master Ground Lease have title to all improvements made to the Leased Premises and shall own all personal property acquired by the Lessee and placed on the Leased Premises or the Existing Improvements during the term of this Master Ground Lease (including, but not limited to, a Capital Project) (collectively, the “Improvements”). Upon the termination of this Master Ground Lease (whether by expiration of the term hereof or prior termination for any cause set forth herein) title to all such improvements and ownership of all such personal property shall thereupon vest in Lessor or its successor in interest. Lessee shall, nonetheless, thereafter execute and deliver to Lessor such evidence of title as Lessor may reasonably request.

(b) Surrender of Leased Premises. Lessee shall, on or before the last day of the term hereof or upon the sooner termination hereof for any cause set forth herein, peaceably and quietly surrender to Lessor the Leased Premises together with all Improvements thereon (including, but not limited to, the Existing Improvements and a Capital Project) and all furniture, furnishings, and equipment (except for any commercial or other equipment not owned by Lessee) located in or upon the Leased Premises, free and clear of any liens and encumbrances.

(c) Lessee's Obligations. Contemporaneously with the expiration of the term hereof or sooner termination of this Master Ground Lease (for causes set forth herein), Lessee
shall immediately execute and/or deliver to Lessor the following (but nothing contained herein shall in any way limit or impair the rights of Lessor in the event of a default by Lessee):

1. Such documents of title and other instruments as Lessor may request to enable Lessor's ownership of all Improvements and all furniture, furnishings and equipment located thereon or on the Leased Premises to be reflected of record; and

2. All books, records, construction plans, surveys, permits and other documents relating to, and necessary or convenient for the operation of the housing system facilities.

(d) Abandonment. Any personal property of Lessee or any sublessee or of any other person (except for vending machines or other commercial equipment) that remains on the Leased Premises after expiration of the term of this Master Ground Lease and for thirty (30) days after request by Lessor for removal, shall, at the option of Lessor, be deemed to have been abandoned and may be retained by Lessor as its property or be disposed of without accountability, in such manner as Lessor may see fit.

Section 7. Lessor's Interest Not Subject to Certain Liens.

(a) It is mutually intended, stipulated and agreed that neither the Lessor's fee simple interest in the Existing Improvements nor Lessor's leasehold interest in the Leased Premises shall be subjected to liens of any nature arising by reason of Lessee's construction of improvements upon the Leased Premises or by reason of any other act or omission of Lessee or any person claiming under, by or through Lessee, including, but not limited to, mechanics' and materialmen's liens. All persons dealing with Lessee are hereby placed on notice that any improvements constructed upon the Leased Premises are the property of Lessee and are constructed for Lessee's use and benefit, and that they should not look to Lessor or to Lessor's credit or assets for payment or satisfaction of any obligations incurred therefor. Lessee has no power, right or authority to subject Lessor's fee simple interest in the Leased Premises to any mechanics' or materialmen's lien or claim of lien. Further, nothing herein shall diminish Lessor's rights to freely enjoy full use and access to portions of the Leased Premises not constituting a portion of the Capital Project Facilities System.

(b) In the event a lien, claim of lien or order for the payment of money shall be imposed against the Leased Premises, Existing Improvements or a Capital Project resulting from or arising out of any act or omission of Lessee or any person claiming under, by or through Lessee, Lessee shall, within thirty (30) days after receipt of notice of the imposition of such lien, claim or order, cause the same to be discharged, satisfied, canceled or released, and the Leased Premises, Existing Improvements and a Capital Project to be released therefrom, by the payment of the obligation secured thereby or by the furnishing of a bond or by any other method which may be prescribed or permitted by law, Lessee shall thereupon furnish Lessor with evidence of having done so in form satisfactory and requisite for recording in the Office of the Clerk of the Circuit Court, Lee County, Florida.
(c) Should Lessee desire to litigate the validity of any lien or claim of lien, nothing herein shall preclude Lessee from doing so, provided that Lessee shall have first posted an appropriate and sufficient bond in favor of claimant and thereby obtained the release of the Leased Premises, Existing Improvements and a Capital Project from such lien. If judgment is obtained by the claimant of any lien, Lessee agrees to pay the same immediately after such judgment shall have become final and the time for appeal therefrom has expired. Lessee shall, at its own expense, defend the interests of Lessee and Lessor in any and all such suits. Lessor may, at its own expense, engage its own counsel and assert its own defenses, in which event Lessee agrees to cooperate with Lessor and make available to Lessor all information and data deemed by Lessor to be necessary or desirable for such defense.

Section 8. Insurance.

(1) Insurance Coverage. Lessor shall obtain and maintain, at Lessee's expense, such insurance coverages and limits as provided by Chapter 284, Florida Statutes, Parts I and II.

(2) Florida Insurer. Each and every policy of insurance required under this Section shall be written by the State Property Insurance Trust Fund and the Florida Casualty Insurance Risk Management Trust Fund and administered by the Department of Insurance, Bureau of Risk Management of the State of Florida, or its equivalent or successor, and copies thereof shall be filed with Lessor. At least fifteen (15) days prior to the expiration of any such policy Lessor shall cause such insurance coverage to be renewed or extended.

(3) Lessor's Rights; Use of Proceeds. Lessor shall deliver to Lessee evidence of insurance at the execution of this Master Ground Lease, and evidence of renewal at least fifteen (15) days prior to the expiration of any insurance term. Any proceeds if, as and when collected, shall be applied to the payment of any and all liabilities, losses and damages for which disbursement is made and for no other purpose.

In the event that Lessee shall at any time fail, refuse or neglect to pay for any insurance required hereunder, Lessor may, at its sole option, after reasonable notice to Lessee, pay for such insurance and Lessee, to the extent permitted by law, shall pay Lessor upon demand for the cost thereof plus ten percent (10%) thereof for administrative overhead.

(4) Waiver of Rights of Subrogation. Lessor shall procure from each of the insurers under any and all policies of insurance set forth above, a waiver, in writing, at the time each such insurance policy is procured or renewed, of all rights of subrogation which each such insurer might otherwise have, if at all, against Lessor, the Board of Trustees and the State of Florida.

(5) To the extent Lessor obtains and maintains in full force and effect comprehensive general liability insurance under the terms of the Master Operating Lease described in Section 17 hereof, no insurance under this Section 8 is necessary and Lessor shall be relieved of its obligations to obtain such insurance.
Section 9. Condition of Leased Premises - Fill, Utilities.

(a) Lessee agrees to accept the Leased Premises in their presently existing condition, “as is”.

(b) It is understood and agreed that Lessor has not determined that the Leased Premises will safely or adequately support the type of improvements desired to be erected and maintained by Lessee upon the Leased Premises.

(c) Lessee, at its sole expense, shall bring or cause to be brought to the Leased Premises adequate connections for water, electrical power, storm sewerage and sewerage, and shall arrange with the appropriate utility companies for furnishing such services. Lessee shall have the right, at its own expense, to request and receive telephone and communication services from the utility companies furnishing such services subject to the customary rules and regulations of said utility companies whether the companies deliver such services directly through their own conduits or pipes, or through conduits and pipes owned by Lessor. Lessor agrees to grant such utility companies rights of access over, under and across the remaining property of Lessor as shall be necessary and convenient for the efficient operation of the housing system facilities, and which do not materially impair the present and future uses of the remaining property of Lessor. Any construction or extension of facilities shall be subject to prior written approval of Lessor, and shall be made without cost to Lessor.

(d) Lessee shall at all times prevent entrance of objectionable quantities of deleterious wastes into Lessor's sewerage system, storm water drainage system and conduit system as required by the applicable governmental authority.

(e) Drains or other facilities provided by Lessee for the purpose of disposing of storm or other waters shall conform to the requirements of all applicable governmental authorities.

Section 10. Fee Unencumbered; No Pledge of Credit of State. Under no circumstances will the fee title to the Leased Premises be encumbered other than by the leasehold interest of Lessor created pursuant to the Lease Agreement described in Section 1 hereof and the leasehold interest created herein, or easements created pursuant hereto. Under no circumstances will the fee title to the Existing Improvements be encumbered other than by the leasehold interest created herein or easements created pursuant hereto. No act taken pursuant to or in furtherance of this Master Ground Lease shall be, or be construed to be, a pledge of the credit of the State of Florida, the Board of Governors, the State Board, or any agency, department or board thereof.
Section 11. Assignment, Subletting and Mortgaging of Leasehold Interest.

(a) Lessee shall not have the right to assign this Master Ground Lease, or any portion thereof, or to sublease all or any portion of the Leased Premises without the prior written consent of Lessor. Thereafter, any subsequent assignment of this Master Ground Lease or subletting of all or any portion of the Leased Premises shall be subject to Lessor's prior written consent, which consent of Lessor shall not unreasonably withhold. Except as expressly permitted herein, any purported assignment, partial assignment or sublease without Lessor's prior written consent in violation of this paragraph (a) shall be null and void, and the attempt to so assign or sublease, shall constitute a default under this Master Ground Lease.

(b) It is expressly understood and agreed that any such assignment, sublease, sale or transfer shall not relieve Lessee of any of its responsibilities and obligations under this Master Ground Lease and that any and all assignees, sublessees or transferees shall be subject to, and bound by all of the applicable terms, covenants and conditions contained in this Master Ground Lease except that Lessee shall be relieved from any and all obligations hereunder if Lessee shall sell or assign all of its interest in the Leased Premises and the Existing Improvements with Lessor's prior written consent.

Section 12. Utility Easements. Lessor reserves the right to grant nonexclusive utility easements, licenses, rights-of-way and other rights or privileges in the nature of easements to others over, under, through, across or on the Leased Premises; provided, however, that such grant is not detrimental to the use or operation of a Capital Project, will not damage or disrupt the physical facilities of said Project, and will not impose any cost upon Lessee.

Section 13. Approval of Height of Structures. Lessee shall, with the cooperation of Lessor but at Lessee's sole expense, secure any required approvals as to the height of any buildings, structures or objects proposed to be erected upon the Leased Premises from all governmental agencies having jurisdiction thereover.

Section 14. Indemnification of Lessor. Lessee shall defend, protect, save, hold harmless and indemnify Lessor, the Board of Trustees, and the State of Florida, and the officers, directors, agents, servants, employees and assigns of each, from and against any and all claims, demands, losses, costs, damages, liens, suits, judgments, penalties, expenses, and liabilities of any kind or nature whatsoever (including attorneys' fees) which are caused by any acts or omissions of Lessee, its employees, servants or agents except where such are caused by the tortious, unlawful or negligent conduct of those indemnified hereunder.

Section 15. Landscaping. Lessee, at its own cost and expense, shall install complete landscaping upon the Leased Premises in a manner satisfactory to Lessor and in compliance with any governmental requirements pertaining to landscaping. In the event that Lessee does not perform the necessary landscape installation as required hereunder, Lessor shall have the right to perform the same, at Lessee's expense, and Lessee agrees to promptly reimburse Lessor upon demand for the cost thereof, plus ten percent (10%) of such cost for administrative overhead.
Section 16. Taxes and Fees.

(a) Lessee agrees to pay any applicable taxes, assessments, license fees and charges on goods, merchandise, fixtures, appliances, equipment and property in or about the Leased Premises.

(b) It is understood that Lessor is exempt from ad valorem taxation with respect to its facilities that are used for public purposes. However, should the Leased Premises or any interest therein or improvement (including the Existing Improvements and a Capital Project) thereon ever become subject to any taxes of any kind Lessee agrees to pay any and all such lawful taxes, assessments or charges which at any time maybe levied by any federal, state, county, city, or any tax or assessment levying body upon the Leased Premises, or any interest in this Master Ground Lease, or any possessory right which Lessor may have in or to the Leased Premises or the improvements (including the Existing Improvements and a Capital Project) thereon by reason of its use or occupancy thereof or otherwise.

(c) Notwithstanding the foregoing provision, Lessor shall, after notifying Lessee of its intention to do so, have the right to contest in good faith by all appropriate proceedings the amount, applicability or validity of any such tax or assessment, and in connection with such contest Lessor may refrain from paying such tax or assessment so long as such contest will not, in the opinion of Lessor's attorney, subject any part of the Leased Premises, a Capital Project or the Existing Improvements to forfeiture or loss, in which event such taxes, assessments or charges shall be paid promptly. Lessee shall, upon request by Lessor, assist and cooperate with Lessor in any such proceedings and Lessee shall incur any costs or expenses in connection with the rendering of such assistance. This provision shall in no way be construed as restricting Lessee from contesting, at its own expense, the legality of such tax or assessment if it so desires.

Section 17. Master Operating Lease. Simultaneous with or subsequent to the execution of this Master Ground Lease, but not later than the date on which construction of a Capital Project is subsequently completed, Lessor and Lessee shall execute a lease agreement in the form attached hereto as Exhibit "B" (hereinafter the "Master Operating Lease") whereby Lessee hereunder shall lease to Lessor hereunder the Existing Improvements, a Capital Project and all other improvements to be constructed by Lessee at its expense on the Leased Premises pursuant to the provisions of this Master Ground Lease.

Section 18. Default by Lessee.

(a) Each of the following events shall be deemed a default by Lessee hereunder and a breach of this Master Ground Lease:

1. If Lessee shall fail to pay, when due, any rent or portion thereof, or any other sum which Lessee is obligated to pay under the terms of this Master Ground Lease, and such sums remain unpaid for a period of thirty (30) days after receipt of written notice by Lessee from Lessor;
2. If Lessee shall attempt to assign this Master Ground Lease, or any portion thereof, or to sublease any portion of the Leased Premises in violation of Section 11 hereof;

3. If Lessee shall use the Leased Premises and/or the Existing Improvements for any purposes not expressly permitted by this Master Ground Lease, and such use shall continue for a period of fifteen (15) days after Lessor shall have given written notice to Lessee to desist from such use;

4. If Lessee shall abandon the Leased Premises and/or the Existing Improvements;

5. If Lessee shall attempt to place a mortgage on the Leased Premises and/or the Existing Improvements or any part thereof, or on this Master Ground Lease or on any rights Lessee may have under this Master Ground Lease in violation of the provisions of this Master Ground Lease;

6. If Lessee shall otherwise fail to comply with any other covenant or condition of this Master Ground Lease and such failure to comply shall continue for a period of fifteen (15) days after receipt of written notice thereof by Lessee from Lessor; and

7. If Lessee shall default in the performance of any covenant or condition of the Master Operating Lease on its part to be observed and performed as Lessor thereunder.

(b) In the event that any of the items of default set forth in subparagraphs (a)3, (a)6 and (a)7 above, is of such nature that it cannot be remedied within the time limits therein set forth, then Lessee shall have such additional time as is reasonably necessary to cure such default, provided Lessee commences the curing of such default within said time limits and proceeds to completely cure the same in a timely and diligent manner.

Section 19. Remedies of Lessor.

(a) Upon the occurrence of any event of default as set forth in Section 18 hereof, Lessor may then terminate this Master Ground Lease by written notice to Lessee and reenter upon and take possession of the Leased Premises, the Existing Improvements and any improvements constructed thereon. In the event Lessor elects to avail itself of the rights and remedies contained in this Section, then such election by Lessor shall entitle Lessor to assume all of Lessee's right, title and interest in and to the housing system facilities, as well as all structures and improvements on the Leased Premises, and the furniture, furnishings, fixtures and equipment therein or thereon, and Lessee shall surrender and deliver possession of the same to Lessor. In addition to the foregoing remedy, Lessor shall be entitled to collect from Lessee any and all costs, including reasonable attorney's fees, which Lessor may incur by reason of Lessee's default hereunder.
(b) In the event this Master Ground Lease is terminated pursuant to the provisions of this Section, Lessor shall have the right to utilize any plans and specifications relating to a Capital Project which have been developed by Lessee upon the payment of reasonable compensation to Lessee for the cost thereof.

Section 20. Waivers. No waiver by Lessor at any time of any of the terms, conditions, covenants or agreements of this Master Ground Lease, or non-compliance therewith, shall be deemed or taken as a waiver at any time thereafter of the same, nor of any other term, condition, covenant or agreement herein contained, nor of the strict and prompt performance thereof by Lessee. No delay, failure or omission of Lessor to re-enter the Leased Premises, nor to exercise any right, power, privilege or option arising from any default shall impair such right, power, privilege or option, or be construed to be a waiver of any such default, relinquishment thereof or acquiescence therein, and no notice by Lessor shall be required to restore or revive time as being of the essence hereof after waiver by Lessor of default in one or more instances. No option, right, power, remedy or privilege of Lessor shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options or remedies given to Lessor by this Master Ground Lease are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law.

Section 21. Waiver of Claims. Lessee hereby waives any claim against Lessor, the Board of Trustees and the State of Florida and all officers, agents or employees thereof for loss of anticipated profits or other damages caused by any suit or proceeding by any third party directly or indirectly attacking the validity of this Master Ground Lease or any part hereof, or by any judgment or award in any suit or proceeding declaring this Master Ground Lease null, void or voidable, or delaying the same, or any part hereof by any third party, from being carried out. In the event a suit or other proceeding results in this Master Ground Lease or any part hereof being declared void or invalid the parties hereto agree to enter into renegotiation efforts to arrive at a valid agreement which will be satisfactory to both parties. Lessor hereby represents and warrants that Lessor is duly authorized to enter into this Master Ground Lease.

Section 22. Quiet Enjoyment. Lessor agrees that Lessee, upon the payment of the rent and all other payments and charges to be paid by Lessee under the terms of this Master Ground Lease, and observing and keeping the agreements and covenants of this Master Ground Lease on its part to be observed and kept, shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term of this Master Ground Lease, without hindrance or molestation.

Section 23. Terms Binding Upon Successors. All the terms, conditions and covenants of this Master Ground Lease shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

Section 24. Condemnation.

(a) In the event that any person or corporation, public or private, shall by virtue of eminent domain or condemnation proceedings, or by purchase in lieu thereof, at any time during the term of this Master Ground Lease acquire title to the Leased Premises (which for the purpose of this Section only shall include not only the land hereby demised but also the
Existing Improvements, a Capital Project and other improvements erected thereon by Lessee) or acquire title to such substantial portion thereof that Lessee cannot make use of the residue for the purposes intended by this Master Ground Lease, such acquisition of title shall terminate this Master Ground Lease, effective as of the date on which the condemning party takes possession thereof. Lessor and Lessee shall be entitled to separate awards with Lessor entitled to the value of the land taken and Lessee entitled to the cost of the improvements taken.

(b) If the condemning party acquires title to a portion of the Leased Premises only, and Lessee can make beneficial use of the residue thereof for the purposes intended by this Master Ground Lease, then this Master Ground Lease shall continue in full force and effect and the total proceeds of condemnation after payment of reasonable attorney's fees and other necessary expenses incurred by either party in connection therewith shall be applied first to the repair or restoration of the housing system facilities by Lessee in accordance with plans and specifications approved by Lessor. Any remaining balance of the condemnation proceeds shall be for the benefit of Lessor.

(c) It is understood that the foregoing provisions of this Section shall not in any way restrict the right of Lessor or Lessee to appeal the award made by any court or other public agency in any condemnation proceeding.

Section 25. Estoppel Certificates. Lessor, at any time and from time to time, upon not less than thirty (30) days prior written notice from Lessee will execute, acknowledge and deliver to Lessee or to whomsoever Lessee may direct, a certificate of Lessor certifying that this Master Ground Lease is unmodified (or, if there have been any modifications, identifying the same); that this Master Ground Lease is in full force and effect; and that there is no default hereunder (or, if so, specifying the default).

Section 26. Miscellaneous.

(a) Laws of Florida Govern. This Lease shall be governed by and be construed in accordance with the laws of the State of Florida without regard to conflict of laws principles.

(b) Force Majeure. Except as otherwise expressly provided herein, neither party shall be responsible for any delay in their respective performances called for under this Master Ground Lease which is caused by acts of God, war, national emergency, labor strike, shortages of material, or governmental regulations or control.

(c) Notice and Delivery. Any notice required or desired to be given hereunder, or any items required or desired to be delivered hereunder, may be served or delivered personally or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:
If to Lessor:

The Florida Gulf Coast University Board of Trustees  
10501 FGCU Boulevard South  
Ft. Myers, Florida 33965-6565  
Attention: Corporate Secretary

With a copy to:

Office of General Counsel  
Florida Gulf Coast University  
10501 FGCU Boulevard South  
Ft. Myers, Florida 33965-6565  
Attention: Wendy S. Morris, General Counsel

If to Lessee:

Florida Gulf Coast University Financing Corporation  
10501 FGCU Boulevard South  
Fort Myers, Florida 33965-6565

or such other address as the party to be served may direct by written notice to the other party. If such notice is sent or delivery is made by registered or certified mail, such notice or delivery shall be deemed served, made and effective seventy-two (72) hours after posting.

(d) **Entire Agreement.** It is mutually acknowledged and agreed by the parties hereto that this Master Ground Lease and the exhibits to this Master Ground Lease contain the entire agreement between Lessor and Lessee with respect to the subject matter of this Master Ground Lease Agreement; that there are no verbal agreements, representations, warranties or other understandings affecting the same; that Lessee, as a material part of the consideration hereof, hereby waives all claims against Lessor for rescission, damages or any other form of relief by reason of any alleged covenant, warranty, representation, agreement or understanding not contained in this Master Ground Lease; and that any purported change, modification, release, discharge or waiver of any provision contained herein shall be of no force, effect, or value, unless set forth in writing and signed by the party to be bound.

(e) **Relationship of the Parties.** Nothing herein contained shall be deemed to create a partnership or joint venture, nor shall the relationship between the parties be construed as principal and agent, or other than Lessor and Lessee.

(f) **Captions.** The captions of this Master Ground Lease are inserted solely for convenience of reference, and under no circumstances are they, or any of them, to be treated or construed as part of, or as affecting, this Master Ground Lease.

(g) **Further Assurances.** At and after the execution of this Master Ground Lease, Lessor and Lessee will, without further consideration, execute and deliver such further
instruments and documents and do such other acts and things as the other party or parties may reasonably request in order to effect or confirm the transactions contemplated by this Master Ground Lease.
IN WITNESS WHEREOF, Lessor and Lessee have caused this Master Ground Lease to be executed in duplicate, either of which may be considered an original, the day and year first above written.

LESSOR:

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

By: __________________________
Its: Corporate Secretary of the University Board

WITNESSES AS TO LESSOR:

Print Name:____________________

Print Name:____________________

LESSEE:

FLORIDA GULF COAST UNIVERSITY FINANCING CORPORATION

By: __________________________
Its: Executive Director

WITNESSES AS TO LESSEE:

Print Name:____________________

Print Name:____________________
CONSENT OF THE STATE OF FLORIDA BOARD OF TRUSTEES
OF THE INTERNAL IMPROVEMENT TRUST FUND
(the “Board of Trustees”)
TO AMENDED AND RESTATED MASTER
CAPITAL PROJECTS GROUND LEASE AGREEMENT

The Board of Trustees, as title owner of the Leased Premises hereunder, hereby consents to the foregoing Amended and Restated Master Capital Projects Ground Lease Agreement on the ______________ day of ____________, 200_.

Gloria C. Nelson, OPERATIONS AND MANAGEMENT CONSULTANT MANAGER, BUREAU OF PUBLIC LAND ADMINISTRATION, DIVISION OF STATE LANDS, DEPARTMENT OF ENVIRONMENTAL PROTECTION

Approved as to Form and Legality

By: ____________________________
    DEP Attorney
EXHIBIT "A"

DESCRIPTION OF THE LAND

PARCEL “A” - Capital Projects – Housing - Phases I-VI

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

COMMENCING AT THE WEST ONE QUARTER CORNER OF SECTION 14, TOWNSHIP 46 SOUTH, RANGE 25 EAST; THENCE N 88°41'31"W, A DISTANCE OF 354.67 FEET; THENCE S 14°12'35"E, A DISTANCE OF 1,348.50 FEET; THENCE N 88°27'56"E, A DISTANCE OF 2,891.84 FEET; THENCE N 47°45'12"E, A DISTANCE OF 1,504.15 FEET; THENCE N 01°42'48"W, A DISTANCE OF 306.16 FEET; THENCE N 88°17'12"E, A DISTANCE OF 927.78 FEET, TO THE POINT OF BEGINNING; THENCE CONTINUE N 88°17'12"E, A DISTANCE OF 100.00 FEET; THENCE N 03°10'23"W, A DISTANCE OF 430.68 FEET; THENCE N 89°01'42"E, A DISTANCE OF 450.44 FEET; THENCE S 00°58'18"E, A DISTANCE OF 1,787.18 FEET; THENCE S 01°42'48"W, A DISTANCE OF 777.21 FEET; THENCE N 01°42'48"W, A DISTANCE OF 250.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 45.72 ACRES MORE OR LESS.

PARCEL “B” - Capital Projects – Housing - Phase VII

A TRACT OR PARCEL OF LAND LYING IN SECTION 13, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, AND LYING WITHIN THE BOUNDARY OF FLORIDA GULF COAST UNIVERSITY, SAID TRACT OR PARCEL BEING DESCRIBED AS FOLLOWS:

FROM THE NORTHWEST CORNER OF LANDS DESCRIBED IN OFFICIAL RECORD BOOK 2497 AT PAGE 1564 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA RUN THE FOLLOWING EIGHT (8) COURSES ALONG THE NORTHERLY LINE OF SAID LANDS: N 88°27'56"E FOR A DISTANCE OF 1,930.23 FEET; N 47°45'12"E FOR A DISTANCE OF 1,504.15 FEET; N 01°42'48"W FOR A DISTANCE OF 306.16 FEET; N 88°17'12"E FOR A DISTANCE OF 1,027.78 FEET; N 03°10'23"W FOR A DISTANCE OF 487.08 FEET; THENCE N 45°32'55"W, A DISTANCE OF 777.21 FEET; THENCE N 01°42'48"W, A DISTANCE OF 250.00 FEET TO THE POINT OF BEGINNING.
DISTANCE OF 320.18 FEET; N 88°44'00"E FOR A DISTANCE OF 1,795.61 FEET TO THE
POINT OF BEGINNING.

FROM SAID POINT OF BEGINNING CONTINUE N 88°44'00"E FOR A DISTANCE OF
585.87 FEET; THENCE RUN S 00°00'00"W FOR A DISTANCE OF 405.56 FEET; THENCE
RUN S 45°00'00"W FOR A DISTANCE OF 19.71 FEET; THENCE RUN N 90°00'00"W FOR
A DISTANCE OF 84.87 FEET TO A POINT OF CURVATURE; THENCE RUN WESTERLY
ALONG AN ARC OF A CURVE TO THE RIGHT OF RADIUS 100.00 FEET (DELTA
25°32′53") (CHORD BEARING N 77°13′34"W) (CHORD 44.22 FEET), FOR A DISTANCE
OF 44.59 FEET TO A POINT OF REVERSE CURVATURE; THENCE RUN WESTERLY
ALONG AN ARC OF A CURVE TO THE LEFT OF RADIUS 100.00 FEET (DELTA
25°32′53") (CHORD BEARING N 77°13′34"W) (CHORD 44.22 FEET), FOR A DISTANCE
OF 44.59 FEET; THENCE RUN S 90°00′00″ W FOR A DISTANCE OF 398.69 FEET;
THENCE RUN N 45°00′00″W FOR A DISTANCE OF 2.80 FEET; THENCE RUN N
00°00′00″E FOR A DISTANCE OF 385.01 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 233,142 SQUARE FEET OR 5.35 ACRES, MORE OR LESS.

BEARINGS HEREIN ABOVE MENTIONED ARE BASED ON STATE PLANE
COORDINATES FOR THE FLORIDA WEST ZONE (83/90 ADJUSTMENT) WHEREAS
THE NORTHERLY LINE OF LANDS DESCRIBED IN SAID OFFICIAL RECORD BOOK
2497 AT PAGE 1564 BEARS N 88°44′00″E.

PARCEL “C” - Capital Project – Parking Garage I

A TRACT OR PARCEL OF LAND LOCATED AT FLORIDA GULF COAST UNIVERSITY
LYING IN SECTION 13, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY,
FLORIDA, WHICH TRACT OR PARCEL IS DESCRIBED AS FOLLOWS:

FROM THE NORTHEAST CORNER OF LANDS DESCRIBED IN DEED RECORDED IN
OFFICIAL RECORD BOOK 2491 AT PAGE 1594, PUBLIC RECORDS OF LEE COUNTY,
FLORIDA RUN S88°44′00″W ALONG THE NORTH LINE OF SAID LANDS FOR 2,591.04 FEET;
THENCE DEPARTING SAID NORTH LINE RUN S01°16′00″E FOR 2,126.24 FEET TO THE POINT
OF BEGINNING.

FROM SAID POINT OF BEGINNING RUN S07°43′54″W FOR 116.04 FEET; THENCE RUN
N82°16′06″W FOR 257.67 FEET; THEN RUN N07°43′54″E FOR 116.04 FEET; THENCE RUN
S82°16′06″E FOR 257.67 FEET TO THE POINT OF BEGINNING.

CONTAINING 29,900 SQUARE FEET (0.69 ACRES), MORE OR LESS.

BEARING HEREIN ABOVE MENTIONED ARE BASED ON THE NORTH LINE OF FLORIDA
GULF COAST UNIVERSITY AS DESCRIBED IN DEED RECORDED IN OFFICIAL RECORD
BOOK 2497 AT PAGE 1564, PUBLIC RECORDS OF LEE COUNTY, FLORIDA TO BEAR
S88°44′00″W.
ALL THAT PART OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE WEST 1/4 CORNER OF SECTION 14, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE N 88°41'31" W 354.67 FEET; THENCE S 14°12'35" E 1,348.50 FEET; THENCE N 88°27'56" E 961.61 FEET; THENCE N 88°27'56" E 1,930.23 FEET; THENCE N 47°45'12" E 1,504.15 FEET; THENCE N 01°42'48" W 306.16 FEET; THENCE N 88°17'12" E 1,027.78 FEET; THENCE N 03°10'23" W 430.68 FEET; THENCE N. 89°01'42" E. 450.44 FEET; THENCE S. 00°58'18" E. 320.18 FEET; THENCE N 88°44'00" E 3,706.20 FEET; THENCE S 19°49'36" W 1,336.16 FEET; THENCE S 02°55'16" E 211.28 FEET; THENCE S 75°24'23" W 644.69 FEET; THENCE S 01°12'51" E 1,175.90 FEET; THENCE S 40°23'38" W 337.56 FEET; THENCE N 88°17'12" E 202.99 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE N 88°17'12" E 363.83 FEET; THENCE S 41°03'57" E 465.55 FEET; THENCE S 02°13'31" E 339.07 FEET; THENCE S 21°20'50" W 1,025.84 FEET; THENCE S 62°11'53" W 2,704.19 FEET; THENCE N 31°47'37" W 338.71 FEET; THENCE N 32°03'28" E 22.84 FEET; THENCE N 79°13'22" E 66.96 FEET; THENCE N 23°49'51" E 59.57 FEET; THENCE N 52°43'36" E 53.47 FEET; THENCE N 27°33'42" E 52.32 FEET; THENCE N 22°45'21" E 48.99 FEET; THENCE N 67°34'38" W 95.06 FEET; THENCE N 21°54'39" E 124.25 FEET; THENCE S 29°26'23" W 43.58 FEET; THENCE N 61°56'47" E 72.91 FEET; THENCE S 85°20'19" E 61.18 FEET; THENCE S 51°03'34" E 19.12 FEET; THENCE N 41°56'30" E 82.68 FEET; THENCE N 13°24'31" E 37.01 FEET; THENCE N 00°05'37" E 78.92 FEET; THENCE N 43°40'42" E 70.05 FEET; THENCE N 28°02'15" E 48.62 FEET; THENCE N 02°10'45" E 55.64 FEET; THENCE N 44°59'01" E 79.17 FEET; THENCE N 68°30'58" E 69.67 FEET; THENCE N 54°46'50" E 15.19 FEET; THENCE N 04°22'03" E 88.26 FEET; THENCE N 20°03'18" E 153.39 FEET; THENCE N 58°58'56" E 568.50 FEET; THENCE N 54°16'58" E 290.51 FEET; THENCE N 86°43'31" E 243.11 FEET; THENCE N 58°31'59" E 291.17 FEET; THENCE N 29°13'05" E 338.35 FEET; THENCE N 45°20'18" E 245.58 FEET; THENCE N 14°08'36" E 408.36 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED, CONTAINING 76.410 ACRES, MORE OR LESS.
EXHIBIT "B"

MASTER OPERATING LEASE
AMENDED AND RESTATED MASTER CAPITAL PROJECTS OPERATING LEASE

THIS AMENDED AND RESTATED MASTER CAPITAL PROJECTS OPERATING LEASE (herein called the “Operating Lease”), made this __________ day of ___________ 200_, between FLORIDA GULF COAST UNIVERSITY FINANCING CORPORATION (the “Financing Corporation”), a Florida not for profit corporation, hereinafter the “Lessor”, and THE FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES (the “University Board”), acting for and on behalf of FLORIDA GULF COAST UNIVERSITY (the “University”), hereinafter the “Lessee” or the University Board”, each in consideration of the agreements to be performed by the other, hereby agree that Lessor shall grant and Lessee shall accept a lease of the Premises (as hereinafter defined) under the following terms and conditions:

WHEREAS, this Operating Lease amends and restates that certain Amended and Restated Master Operating Lease, dated as of January 1, 2005 (the “Prior Operating Lease”), between the Financing Corporation and the University Board, acting for and on behalf of the University, and contains the original provisions of the Prior Operating Lease as amended and supplemented hereby; and

WHEREAS, the Lessor was incorporated by the University Board to provide direct support to the University and designated by the University Board as a “University Direct Support Organization” pursuant to §1004.28, Florida Statutes (2005); and

WHEREAS, the Lessee desires to provide for the operation, financing or refinancing of various capital projects, from time to time (collectively, the “Capital Project”), of the University to be (a) located on land subleased from the University Board pursuant to an Amended and Restated Master Capital Projects Ground Lease Agreement, dated of even date herewith (the “Master Ground Lease”), between the University Board, acting for and on behalf of the University, as lessor, and the Financing Corporation, as lessee, as the same may be amended and supplemented from time to time and (b) financed from tax-exempt revenue obligations (“Bonds”), issued by the Lessor, at the direction of the Lessee, from time to time, which Bonds are secured by the Lessee’s obligations to pay Base Rent (as defined in Section 6 herein) to the Lessor and such Base Rent obligations are secured by and payable solely from Net Revenues (defined herein) derived from the Capital Project Facilities System (defined herein); and

WHEREAS, the Bonds will be issued in compliance with the terms hereof and such Bonds shall be specifically identified, from time to time, in an exhibit hereto (the “Bonds Exhibit’’); and

WHEREAS, the Lessee has previously issued the Bonds listed on Exhibit “A” hereto (the “Prior Bonds’’); and
WHEREAS, the Lessor and the Lessee duly approved (i) the construction of the projects financed by the Prior Bonds; (ii) the issuance of the Prior Bonds and (iii) the Prior Operating Lease; and

WHEREAS, the Issuer will issue the bonds listed on Exhibit “B” hereto (the “Current Bonds”); and

WHEREAS, the Lessor and the Lessee duly approved (i) the construction of the Project to be financed by the Current Bonds; (ii) the issuance of the Current Bonds and (iii) this Amended and Restated Operating Lease; and

WHEREAS, the University Board, as lessor, will lease the Land (defined below), the Existing Improvements (defined herein) and any additional improvements thereon to the Financing Corporation, as lessee, for the construction of certain capital projects, from time to time, pursuant to the Master Ground Lease; and

WHEREAS, the Financing Corporation will lease back the Land, the Existing Improvements, and any additional improvements, from time to time included within the definition of the term Improvements, to the University Board, as more fully described in Exhibit “A” to the Master Ground Lease, and the University Board shall operate the Capital Project Facilities System (defined below) pursuant to the terms set forth herein;

WHEREAS, all of Lessor’s interest in this Operating Lease and the Master Ground Lease (each as amended and supplemented), by and between the Lessor and the Lessee, will be assigned to a trustee (the “Trustee”) under a trust indenture, entered into by Lessor with the Trustee, providing for the issuance of and security for the repayment of the Bonds.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the parties hereto agree to enter into this Operating Lease:

Section 1. Definitions. Unless specifically set forth herein, the words set forth below shall have the following meanings:

"Bonds" shall mean revenue bonds designated as “Capital Improvement Revenue Bonds, Series ______(_______Project” (designated by year of delivery and Capital Project) and any Additional Parity Obligations, issued by the Lessor from time to time to finance Capital Projects approved by the Lessee, as set forth in Exhibits “A” and “B” hereto.

"Additional Parity Obligations" shall mean additional bonds and other obligations issued in compliance with the terms, conditions and limitations contained herein and rank equally in all respects with the Bonds.

"Annual Budget" shall mean the budget prepared in accordance with Section 29 of this Operating Lease.
"Capital Project" shall mean the capital project facilities as set forth in Exhibit "D" (as may be amended and supplemented, from time to time) attached hereto.

"Capital Project Facilities System" shall mean the Housing System and the Parking System, together with any and all improvements, operated and maintained by the Lessee at the University.

"Costs of Operation and Maintenance of the Capital Project Facilities System" shall mean the expense, paid or accrued, of operation, maintenance and repair (including insurance) of the Capital Project Facilities System, for each Fiscal Year, as calculated in accordance with sound accounting practice, but shall not include any reserve for renewals, replacements or extraordinary repairs or any allowance for depreciation.

"Debt Service Fund" shall mean the special fund created in this Operating Lease for the purpose of making payments of debt service on the Bonds, Additional Parity Obligations and any other indebtedness of the Lessor.

"Existing Improvements" shall mean certain improvements to the University’s Capital Project Facilities System (defined herein) designated Phase I through Phase VI (including, but not limited to parking areas, sidewalks, access roads, laundry rooms, meeting rooms and common areas and all personal property located on any of the foregoing).

"Fiscal Year" shall mean the 12 month period commencing July 1 of each calendar year, or such other fiscal year as adopted by the Lessee as its fiscal year.

"Gross Revenues" shall mean all income or earnings, including income from fees and other charges made and collected and proceeds from the sale of all or a part of the Capital Project Facilities System, derived by the Lessee from the operation of the Capital Project Facilities System.

"Housing System" shall mean the complete student residence facility system owned, operated and maintained by the Lessee as the University, together with any and all improvements, extensions and additions thereto.

"Housing System Account" shall mean the account established and created by Section 30.

"Improvements" shall have the meaning set forth in Section 3 of this Operating Lease.

"Indenture" means any instrument providing for or securing repayment of the Bonds.

"Land" shall mean that certain parcel of real property in Ft. Myers, Lee County, Florida, more particularly described in Exhibit “C” attached hereto and by this reference made a part hereof.

"Lease Payments" shall mean all Base Rent and Additional Rent obligations of the Lessee under this Operating Lease.
"Master Ground Lease" shall have the same meaning as provided in the third WHEREAS clause.

"Maximum Annual Debt Service" shall mean the greatest sum of all debt service required to be paid from Net Revenues on all Bonds in the then current fiscal year or any fiscal year following the date of calculation.

"Net Revenues" for any particular period, shall mean the excess of (a) all Gross Revenues for the period, exclusive of gifts, grants, bequests, donations and contributions derived from the operation of the Capital Project Facilities System, over (b) all expenses payable from Gross Revenues of the Capital Project Facilities System during the period, all as determined in accordance with generally accepted accounting principles, to which shall be added depreciation, amortization, capitalized rental expense, and interest and any amount charged against a depreciation reserve fund for the purpose of paying part or all of the total principal and interest requirements on the Bonds (and any other indebtedness payable from the Gross Revenues of the Capital Project Facilities System) in the applicable period (to the extent the foregoing items are included as expenses).

"Operation and Maintenance Fund" or "Plant Fund" shall mean the special fund created in this Operating Lease for the purpose of establishing reserves for renewals and replacements of the Capital Project, payment of extraordinary costs of operation and maintenance, payment of debt service on the Bonds, Additional Parity Obligations or other indebtedness of the Lessor (should the Net Revenues in any Fiscal Year be insufficient for such purpose) and such other costs, including additions and improvements to the Capital Project as may be deemed necessary or appropriate at the sole discretion of the Lessor.

"Parking System" shall mean the complete student parking lots and garage facilities owned, operated and maintained by the Lessee at the University, together with any and all improvements, extensions and additions thereto.

"Parking System Account" shall mean the account so established and created by Section 30.

"Personal Property" shall have the meaning set forth in Section 4 of this Operating Lease.

"Premises" shall have the meaning set forth in Section 2 of this Operating Lease.

"Related Financing Documents" shall mean all documents and certificates relating to the issuance or payment of Bonds, including any documents entered into in connection with any Credit Facility (as defined in the Indenture) or any hedging transactions.

"Revenue Fund" shall mean the special fund created in this Operating Lease into which all Gross Revenues shall be deposited.
Section 2. Premises. The lease shall be of the Lessor's total possessory interest in the Improvements, Land and Personal Property, as hereinafter defined. The Land together with the Improvements and Personal Property shall be hereinafter referred to as the “Premises”.

Section 3. Improvements. The “Improvements” shall initially mean the Existing Improvements and the Capital Project and shall include any related improvements (as set forth in Exhibit “D” attached hereto) that Lessor shall construct pursuant to the general specifications and guidelines set forth in the Master Ground Lease, which improvements shall include but not be limited to, the following:

(a) All buildings, structures and improvements on the Land at the date hereof (including subsurface structures and foundations) and all buildings, structures and improvements hereafter erected or placed on the Land during the Operating Lease term;

(b) All parking facilities, roads, walkways, terraces, loading and dockage facilities, fencing and utility lines erected on the Land at the date hereof; and

(c) All additions, alterations, restorations, repairs and replacements of any of the foregoing.

Section 4. Personal Property. The “Personal Property” shall include all fixtures, equipment and personal property of every nature whatsoever now owned by the Lessor and located in or on, or attached to, or used or intended to be used in connection with the operation of the Land, and the Improvements and any replacements, additions, alterations, repairs or restorations thereof made by Lessor or Lessee during the term of this Operating Lease, including furnishings which Lessor is required to place on the Premises pursuant to Section 5, subparagraph (g) of the Master Ground Lease.

Section 5. Termination. The Operating Lease shall terminate on the date on which all Bonds and any obligations under any Related Financing Documents secured hereby are fully paid and canceled unless otherwise terminated as provided herein. Notwithstanding anything to the contrary herein (including any default by the Lessee), the Lessor agrees not to terminate this Operating Lease for any reason whatsoever, including termination of the Master Ground Lease, as long as there remains unpaid any obligations of the Lessor under any outstanding Bonds pursuant to the terms of the Bonds or any Related Financing Documents, loan agreements, indentures or other documents relating thereto, or under any obligations issued in replacement thereof or substitution therefor, it being acknowledged that the continuing validity and enforceability of this Operating Lease may be essential to the collateral security for such obligations. The Lessor and the Lessee shall not terminate this Operating Lease or modify this Operating Lease in any manner that would impair or adversely affect the holders of any such obligations. The holders of such obligations shall be deemed to be third-party beneficiaries of this covenant. Notwithstanding the foregoing, under no circumstance shall this Operating Lease extend beyond the term of the Lessee’s lease agreement with the State of Florida Board of Trustees of the Internal Improvement Trust Fund described in the Master Ground Lease.
Section 6. Rent. The Lessee agrees to pay Lessor, at such address as Lessor shall designate to Lessee during the term of this Operating Lease, the following rent (the "Lease Payments"): 

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

(b) Additional Rent. It is the intention of the parties that Lessee shall bear all expenses associated with the ownership, operation and rental of the Premises and that the rent payable to Lessor shall be net of all such expenses, including, but not by way of limitation, taxes, insurance, maintenance and repair. Therefore, as additional rent ("Additional Rent"), Lessee shall, during the term hereof, pay and discharge, except as hereinafter provided, within the time provided under applicable Florida law, after Lessee's receipt of an invoice therefor, all assessments, water rents and charges, sewer rents and any governmental impositions and other charges of every kind and nature whatsoever, extraordinary as well as ordinary, and each and every installment thereof, and all fees and charges of public and governmental authorities for maintenance, use and occupation of any building or facility covered hereby which shall or may during the term be charged or become due and payable or liens upon or for the Premises or any part thereof, or any appurtenances, or equipment thereof or therein, or the sidewalk or street in front of, or adjoining the Premises, under or by virtue of all present or future laws, ordinances, orders, rules or regulations of any governmental authorities having jurisdiction over the Premises. Additionally, Lessee shall pay or make provision for the payment of all charges for water, heat, gas, hot water, electricity, light and power, maintenance of parking areas and any other service or services furnished to the Premises or the occupants thereof, during the term of this Operating Lease within thirty (30) days after the same shall become due and payable. Lessee shall be deemed to have complied with the covenant of this Subparagraph (b) if payment of such assessments, water rents, rates or charges, sewer rents, or other governmental impositions or charges have been made, either within any grace period allowed by law or by the governmental authorities imposing the same, during which payment is permitted without penalty or interest, or before same shall become a lien upon the Premises, whichever is later, and Lessee shall, upon
written notice by Lessor, produce and exhibit to Lessor receipted bills or sufficient and adequate copies of same as proof of such payment. It is expressly understood that any tax levied on the Premises, the Lease Payments or the Ground Lease or this Operating Lease shall be borne by Lessee and Lessee may pay the same directly to the appropriate authority, if applicable, or remit the amounts due, if any, to Lessor as Additional Rent and Lessor shall then make the remittance to the appropriate governmental authority. In addition thereto, if applicable, Lessee shall pay the Additional Rent set forth herein, during the term of this Operating Lease and all costs, expenses and obligations of any kind and nature whatsoever relating to the Premises, whether extraordinary or ordinary, and whether incurred from operation of the Premises, or through external services provided to the Premises, shall, except as otherwise provided herein, be paid by Lessee.

Notwithstanding the foregoing, unless failure to pay may result in a lien on the assets of the Lessor, nothing herein contained shall require or be construed to require Lessee to pay any inheritance, estate, succession, transfer, gift, franchise, capital levy, income or profit tax or any corporate or partnership income tax, all of which, if applicable, shall be the sole and exclusive responsibility of Lessor. The Lessor shall repay any such sums paid by Lessee on behalf of Lessor, but such obligation shall not give rise to any set off claims or other remedies against the Lessee that will diminish the obligations of Lessor hereunder.

Section 7. Use of Premises.

(a) The Lessee shall use the Premises for the purpose of providing capital project facilities for the students, faculty and staff members of the University.

(b) Prohibition. Lessee shall not permit the use of the Premises for any purposes which shall be unlawful or shall be noxious, injurious, or in any way harmful to the Premises, or to any persons occupying same, by reason of the production or emission of dust, smoke, refuse, gas fumes, noise, radiation, vibration or similar circumstances and conditions. Without limiting the foregoing, Lessee shall do no act that constitutes a prohibited use under the terms and provisions of this Operating Lease.

(c) Other Income. It is understood and agreed that Lessee may maintain, install and receive income from all concessions, franchises, coin operated equipment or machines of a similar nature, including but not limited to, laundry equipment, food, beverage and cigarette machines that Lessee may choose to operate on the Premises. Except as permitted herein, no commercial equipment or facilities whatsoever shall be permitted to be established, installed or operated on the Premises.

Section 8. Lessee's Duty to Maintain and Repair Premises. The Lessee, during the term of this Operating Lease, shall, at its expense, make all repairs, structural repairs, replacements and perform all maintenance as shall be reasonably necessary to keep the Improvements and Personal Property in good condition and repair, suitable for the occupancy intended. The Lessee shall comply with all laws, ordinances, orders, regulations, rules, and requirements relating to the Premises or any support facilities thereto incident to or resulting from any use or occupation thereof by Lessee or its sublessees. The Lessee further agrees that
Lessee shall repair all damages or injury done to the Premises by Lessee or by any person who may be in or upon the Premises, at its expense. Lessee further agrees to pay all taxes, special assessments and insurance on said property and all other expenses relating to the ownership or operation of the Premises, notwithstanding whether Lessor or Lessee was or is primarily liable for the payment of said expenses.

**Section 9. Taxes.** Lessee shall pay all taxes relating to the Land, Improvements and Personal Property and this Operating Lease, including, but not by way of limitation, ad valorem taxes (real and personal), if any, general and special assessments, all taxes allocated to Personal Property located on or used in connection with the Land, any sales tax or use tax imposed on the rental, use, and operation of the Premises pursuant to this Operating Lease or the Ground Lease, and any fines, penalties, interest or costs that may be charged for nonpayment of any such taxes. If Lessor is primarily liable for any such taxes or assessments, Lessee shall pay such amounts to Lessor as Additional Rent under Section 6(b) hereof.

**Section 10. Insurance.**

1. **Insurance Coverage.** Lessee shall maintain, at its expense, such insurance coverages and limits as provided by Chapter 284, Florida Statutes, Parts I and II. Additionally, Lessor shall obtain and maintain at all times during the term of this Operating Lease at its expense, such “umbrella” insurance coverage satisfactory to the Lessee.

2. **Florida Insurer.** Each and every policy of insurance required under this Section, except for the "umbrella" insurance required to be obtained by the Lessor, shall be written by the State Property Insurance Trust Fund and the Florida Casualty Insurance Risk Management Trust Fund and administered by the Department of Insurance, Bureau of Risk Management of the State of Florida, or its equivalent or successor, and copies thereof shall be filed with Lessor. At least fifteen (15) days prior to the expiration of any such policy Lessee shall furnish to Lessor proof that such insurance coverage has been renewed or extended.

3. **Lessor's Rights; Use of Proceeds.** Lessee shall deliver to Lessor evidence of insurance at the execution of this Operating Lease, and evidence of renewal at least fifteen (15) days prior to the expiration of any insurance term. Any proceeds if, as and when collected, shall be applied to the payment of any and all liabilities, losses and damages for which disbursement is made and for no other purpose.

In the event that Lessee shall at any time fail, refuse or neglect to obtain and pay for any insurance required hereunder, Lessor may, at its sole option, after reasonable notice to the Lessee, obtain and pay for such insurance from any insurer licensed to do business in Florida and Lessee, to the extent permitted by law, shall pay Lessor upon demand for the cost thereof plus ten percent (10%) thereof for administrative overhead.

**Section 11. Attorneys' Fees.** In the event Lessor becomes a party in any lawsuit relating to this Operating Lease or the ownership and operation of the Land, Improvements or Personal Property, Lessee shall, to the extent permitted by Florida law, indemnify Lessor for all expenses and costs, including reasonable attorneys' fees incurred by Lessor in any such lawsuit;
provided, however, that this Section 11 shall not apply to expenses and costs incurred in a suit between Lessor and Lessee regarding this Operating Lease.

Section 12. Utilities. Lessee shall pay all charges for heat, air conditioning, water, gas, electricity and other utilities used in connection with the Land, Improvements and Personal Property.

Section 13. Assignment and Subletting. Lessee shall not have the right to assign this Operating Lease or any interest therein, or to sublet any portion of the Premises other than to an agency or instrumentality of the State of Florida without the prior express written consent of Lessor; provided, however, Lessee may let or sublet the capital project facility located on the Premises or any part thereof or any right or privilege pertaining thereto, to students, faculty and staff members of the University. It is hereby expressly agreed between the parties that no assignment or subletting of the Premises shall in any way relieve the Lessee of any of its obligations under the terms and provisions of this Operating Lease.

Section 14. Other Agreements. The parties to this Operating Lease understand and agree that the provisions herein shall be viewed in accordance with the provisions of the Master Ground Lease, and in the event of any conflict between the terms hereof and the terms of said Master Ground Lease, the terms of the Master Ground Lease shall prevail.

Section 15. Warranties of Lessor. Notwithstanding the provisions of Section 8 hereof, Lessor hereby represents and warrants to Lessee that it shall cause the Capital Project and all support facilities and appurtenances thereto to be constructed in substantial conformity with plans and specifications, or such amendments and modifications thereto, that have been previously approved in writing by Lessee.

Lessor shall use its best efforts to cause its general contractor to begin correcting, within thirty (30) days following receipt of notice from Lessee, at no cost or expense to Lessee, any work which is found to be defective in workmanship or materials (pursuant to local industry standards) or not in substantial conformity with such plans and specifications; provided, however, that Lessee shall have given written notice of such nonconformity to Lessor within the applicable warranty period. The above-described warranties shall be in addition to, and not in derogation of, all other rights and privileges that Lessee may have either at law or in equity, which rights Lessee expressly reserves hereunder. Additionally, Lessor shall assign, transfer, and deliver to Lessee any and all warranties from manufacturers and/or suppliers of, any fixtures, and equipment or components thereof, installed or incorporated in the Premises by Lessor and shall further render such assistance and cooperation as Lessee may from time to time request in connection with any warranty claims required to be filed by Lessee pursuant to any such warranties.

Section 16. Indemnity. The Lessee, during the term hereof, shall, to the extent permitted by Florida law, indemnify and save harmless the Lessor from and against any and all claims and demands whether for injuries to persons or loss of life, or damage to property, occurring on or within the Premises and arising out of the use and occupancy of the Premises by
Lessee or its sublessees, excepting however, such claims and demands whether for injuries to person or loss of life or damage to property, caused by acts or omissions of the Lessor.

In the event Lessor shall pay or be compelled to pay any sum of money or do any act that shall require the expenditure or payment of any sum by reason of the failure of Lessee to perform any one or more of the covenants herein contained. Lessee shall repay the same promptly upon demand, plus ten percent (10%) thereof, for administrative overhead, and in default thereof, the sum or sums so paid by Lessor together with all interest, costs and damages, shall or may be added as additional rent to the next installment of rent becoming due and shall be payable as such, but it is expressly covenanted and agreed hereby that payment by Lessor of any such sums of money or the doing of any such acts shall not be deemed to waive or release the default in the payment or doing thereof by Lessee, by reason of Lessee's default with respect to any such payment or act.

Section 17. Condemnation.

(a) Substantial. If the whole of the Premises hereby demised shall be taken by condemnation or purchased in lieu thereof by any competent authority, then the term hereby granted shall cease as of the day prior to the purchase or taking of possession by such authority, whichever first occurs, and rent hereunder shall be paid to and adjusted as of that day.

If a portion of said demised Premises shall be condemned or taken, and, as a result thereof, there shall be such a major change in the character of the Premises as to prevent Lessee from using the same in substantially the same manner as theretofore used, then and in that event, this Operating Lease shall terminate as of the date when the part of the Premises so taken or required shall be required for such public purpose.

Since Lessor shall have made substantial improvements to the structures located on the Land, the award of damages or compensation for the Premises taken, or the amount paid pursuant to private purchase in lieu thereof, whether such condemnation or sale be total or partial, shall be divided such that Lessor shall receive that share of the award allocated to the value of the Improvements taken and Lessee shall receive that share allocated to the value of the Land taken.

(b) Partial. Prior to or during construction, if the condemning party acquires title to a portion of the Premises only and Lessor can make beneficial use of the residue thereof for the purposes intended by this Operating Lease, then this Operating Lease shall continue in full force and effect and the total proceeds of condemnation after payment of reasonable attorneys' fees and other necessary expenses incurred by either party in connection therewith shall be applied first to the repair or restoration of the Improvements by Lessor in accordance with plans and specifications approved by Lessee. Any remaining balance of the condemnation proceeds shall be for the benefit of Lessee. After completion of construction, if the condemning party acquires title to a portion of the Premises only and Lessee can make beneficial use of the residue thereof for the purposes intended by this Operating Lease, then this Operating Lease shall continue in full force and effect and the total proceeds of condemnation after payment of reasonable attorneys' fees and other necessary expenses incurred by either party in connection
therewith shall be applied first to the repair and restoration of the Improvements by Lessee. Any remaining balance of the condemnation proceeds shall be for the benefit of Lessee.

(c) Appeals. It is understood that the foregoing provisions of this Section shall not in any way restrict the right of Lessee or Lessor to appeal the award made by any court or other public agency in any condemnation proceeding.

(d) Bondholder Protection. Notwithstanding anything to the contrary herein, all condemnation awards and proceeds shall be payable to Lessor to the extent necessary to satisfy and repay all present and future obligations of the Lessor under the Bonds, the Indenture and other Related Financing Documents.

Section 18. Casualty.

(a) Notice and Rebuilding. If during the term of this Operating Lease, the Premises or any furnishings and equipment installed therein at the commencement of the term of this Operating Lease or thereafter erected thereon, or therein, shall be destroyed or damaged in whole or in part by fire or any other cause, Lessee shall give to Lessor immediate notice thereof, and Lessee, at its own cost and expense, shall except as hereinafter provided, repair, replace, and rebuild the same with a structure of substantially the same character and condition as existed immediately prior to such occurrence, and Lessor shall in no event be called upon to repair, replace or rebuild any such buildings, improvements, equipment or furnishing, nor to pay any of the cost or expense thereof, beyond or in excess of the insurance proceeds available for such purpose. If such destruction or damage occurs during the period during which Lessor is constructing improvements on the Premises, Lessor shall be responsible for repairing the damage or reconstructing the Premises and for paying all costs in excess of insurance proceeds; or if such destruction or damage is covered by warranty pursuant to the provisions of Section 15 hereof, the warrantor shall be responsible therefor. It is not the intent of this section to release Lessor from any cause of action or claim resulting from its negligence.

(b) Statements. In the event of a loss which Lessee is obligated to repair or rebuild, Lessee shall present statements for work completed to Lessor, or, in the event that an architect has been retained to supervise such work, then Lessee shall submit the appropriate requisition certificate of the architect in charge of such work to Lessor, and Lessor shall disburse such insurance proceeds to Lessee. If the loss is one that Lessor is obligated to repair or rebuild, Lessor shall request disbursement of insurance proceeds for its own costs and expenses incurred. In each instance of disbursement of proceeds prior to the completion of any work, Lessee or the architect, if any, shall also certify to Lessor that the cost of the then remaining work necessary for completion thereof does not exceed ninety percent (90%) of the balance of said insurance proceeds as will remain after payment of the sum so requisitioned, and that such work has been prosecuted in accordance with the plans and specifications therefor. If in the course of such work any mechanics' or other lien or order for the payment of money shall be filed against the Premises or against Lessor or Lessee or if Lessee shall be in default in the payment of any Base Rent or additional rent then due and payable, or if there is any existing and unremedied default on the part of Lessee under this Operating Lease as to which Lessor has served notice upon Lessee and which Lessee has failed to cure within the time provided herein, Lessor shall not be
obligated to make any payment of such insurance proceeds until and unless such liens or orders have been fully bonded, or satisfied, or until such default has been cured.

(c) **Additional Payments.** If the net amount of such insurance proceeds shall be insufficient for the proper and effective repair, replacement or rebuilding of the Premises or any fixtures or equipment thereon, Lessee shall pay the additional sum required to effect such repair, replacement or rebuilding. Lessee shall retain any excess insurance proceeds in a trust fund, so long as this Operating Lease is outstanding, for the purpose of insuring prompt and full payment to Lessor.

(d) **Substantial Damage.** If during the term of this Operating Lease the Premises and any fixtures and equipment thereon shall be damaged or destroyed in excess of fifty percent (50%) of their insurable value, then, in all cases, all insurance proceeds derived and collected from the insurance carrier shall be applied to the restoration and rebuilding of the Premises and any equipment and fixtures thereon in accordance with the provisions of Section 10(3) hereof. Lessee shall commence such restoration and rebuilding within eighteen (18) months of receipt of such proceeds, unless Lessor is obligated to repair or restore under the provisions of this Operating Lease, in which event, Lessor shall commence such repair or restoration within said time. If Lessee is obligated under the provisions of this Operating Lease to repair or restore the Premises but does not commence repair or restoration within said eighteen (18) months, Lessor shall have the option *inter alia*, to: (1) do nothing and continue to collect the Lease Payments which shall not abate for any reason, (2) utilize all insurance proceeds to repair or restore the Premises, or in the alternative, (3) retain the proceeds of insurance and terminate this Operating Lease and the Master Ground Lease, whereupon each party shall be relieved of any further obligations hereunder or to the other party.

(e) **Reconstruction Progress.** Under no circumstances shall Lessor cancel this Operating Lease if reconstruction by Lessee is proceeding normally or if such reconstruction efforts, or the commencement thereof, are hindered or halted by any act beyond the control of the parties as enumerated in Section 35(c) hereof. All such work and the performance thereof shall be subject to and be performed in accordance with the provisions of Section 19 hereof.

(f) **Continuity of Rent.** In the event of the partial or complete destruction of the Premises, Lessee's obligation to pay the Lease Payments shall be partially or fully abated in proportion to the percentage of the Premises rendered unsafe or uninhabitable (in Lessee's reasonable discretion) until the Premises have been fully restored; provided that Lessor shall receive during such period the proceeds, which shall not be less than the Base Rent set forth in Section 6 herein, of the insurance required under Section 10 and any other insurance maintained by Lessee as well as any other amounts from Lessee necessary to pay the full Lease Payments set forth herein. In no event shall the Base Rent be less than that required to make payments on the Bonds and under the Related Financing Documents.

**Section 19. Alterations, Improvements and Additions.**

(a) **Impairment of Value.** Subject to the compliance with and observance of all of the terms, conditions, covenants and agreements provided for in this Operating Lease,
Lessee shall have the right, to be exercised at Lessee's option at any time during the term of this Operating Lease, to make alterations, improvements and additions in and to the Premises; provided, however, that the completed alterations, improvements and additions shall not materially impair the value of any existing buildings or improvements comprised in the Premises, that Lessee shall notify Lessor of its intention to make such alterations, improvements or additions in writing prior to the commencement of any such work, and that Lessee shall:

(1) Make, erect and complete the proposed improvements in accordance with such plans and specifications therefor, and in compliance with the building code and all laws, ordinances, rules, regulations and orders of any governmental bureau, body or office having competent authority to make the same and which may be applicable to the erection or construction of said improvement;

(2) Fully pay for said improvements at the times and in the manner as fixed by contracts therefor;

(3) Perform any and all duties which are or may be legally imposed on Lessor as owner of the Premises in connection with such construction and obtain any necessary certificate of occupancy therefor; and

(4) Procure and maintain throughout the period of any such construction a policy or policies of worker's compensation, builders' risk and public liability insurance.

(b) Rent Continues. During the period of such alteration and improvement, Lessee shall continue to pay the Lease Payments pursuant to Section 6 of this Operating Lease and shall prevent any lien or obligation from being created against or imposed upon the Premises. All liens or charges for services rendered or materials furnished shall be discharged or bonded promptly after receipt of notification thereof from Lessor.

(c) Significant Damage. The provisions of this section shall not apply in the event of significant damages to or destruction of the Premises, except to the extent expressly set forth in Section 18. The provisions of Section 18 shall govern and control in the event of any damage to or destruction of the Premises.

Section 20. Liens.

(a) Notice to Discharge. If Lessee suffers or permits any mechanics' or other lien or order for the payment of money to be filed against the Premises by reason of any change or alteration to the Premises or any addition thereto or the cost or expense thereof, or any contract relating to the same, or against Lessor as owner thereof as a result of or arising out of any labor or material furnished with respect to the Premises, Lessee shall, within thirty (30) days after notice to Lessee of the filing thereof, cause the same to be canceled and discharged of record and shall further defend Lessor, at Lessee's sole cost and expense, in any action, suit or proceeding which may be brought thereon, or for the enforcement of the same, and will pay any damages and satisfy and discharge any judgment entered therein and render harmless Lessor.
from any liability, claim or damage resulting therefrom. Additionally, Lessee will pay Lessor's reasonable attorneys' fees, if any, if Lessee fails to comply with the foregoing.

(b) **Right to Contest.** Lessee shall have the right to contest or review by legal proceedings, or in such other manner as it may deem suitable (which, if instituted, Lessee shall conduct at its own expense, and free of any expense to Lessor, and, if the Lessee's opinion necessary, in the name of Lessor), any such lien filed against the Premises upon condition that, before instituting any such proceedings, if the contested items shall not have been paid, Lessee shall furnish to Lessor a surety company bond or a cash deposit sufficient to cover the amount of such contested items, with interest and penalties for the period which such proceedings may reasonably be expected to take, securing payment of such contested items, interest and penalties, and all costs in connection therewith, and upon the furnishing of such bond or cash deposit Lessee shall not be deemed to be in default in the payment of such contested items. Alternatively, Lessee shall have the right to transfer any such lien to bond with the Clerk of the Circuit Court of Lee County, Florida. Notwithstanding the provisions of the foregoing sentence or the furnishing of any such bond or deposit, Lessee shall promptly pay all such items if at any time the Premises or any part thereof shall be in danger of being forfeited or lost by reason of such nonpayment, and upon such payment any such deposit or security shall be forthwith returned to Lessee and any such bond canceled and discharged. The legal proceedings herein referred to shall include appropriate appeals from any judgments, decrees or orders, but all such proceedings shall be commenced as soon as is reasonably possible after the imposition or assessment of any contested items and shall be prosecuted to final adjudication with reasonable dispatch. In the event of any reduction, cancellation or discharge of any such contested item, Lessee shall pay the amount finally levied against the Premises or adjudicated to be due and payable on any such contested items and upon such payment any such deposit or security shall be forthwith returned to Lessee and any such bond canceled and discharged, and if there shall be any refund with respect thereto, Lessee shall be entitled to the same.

**Section 21. Inspection.** Lessee shall permit Lessor or the agents of Lessor upon reasonable notice to enter upon the Premises between the hours of 9:00 a.m. and 5:00 p.m. on business days to inspect the Premises; provided, however, that Lessor shall not unreasonably interfere with Lessee's or its sublessees' use of the Premises.

**Section 22. Quiet Enjoyment.** Lessee, upon payment of the Base Rent and all sums herein reserved and upon the due performance of all terms, covenants and conditions and agreements herein contained on Lessee's part to be kept and performed, shall and may at all times during the term hereof peaceably and quietly enjoy the Premises. The foregoing is not in derogation of, but in addition to, Lessee's right of quiet enjoyment and peaceful possession under law.

**Section 23. Option to Purchase.** Lessee, shall at any time, have the right to purchase the leased Improvements and Personal Property. The Lessee giving not less than sixty (60) days notice in writing to the Lessor shall exercise such option. The purchase price shall be equal to all sums payable under the Bonds, Indenture and other Related Financing Documents which amount shall at a minimum equal that amount owing on the Bonds, any redemption premiums, all sums necessary to pay the expenses of the Trustee, paying agents, tender agent, and all other related
costs including legal fees which are necessary to effect payment or redemption of the Bonds and payment of all obligations owed to under a Related Financing Document. Upon such payment both the Master Ground Lease and this Operating Lease shall be terminated and Lessee shall be granted full and unencumbered title to the Premises.

Section 24. Default. In the event that either of the parties shall fail to perform any covenant required to be performed by such party under the terms and provisions of this Operating Lease, and such failure shall continue unremedied or uncorrected for a period of thirty (30) days after written notice to such party by the other party hereto, specifying such failure, such party shall be in default hereunder. If Lessee shall fail to make any payment required under this Operating Lease, which failure to pay shall not be remedied within thirty (30) days from the date of written notice to Lessee specifying such failure, Lessee shall be in default hereunder. Subject to the limitation on termination in Section 5 hereof, this Operating Lease may be terminated at the option of the non-defaulting party upon giving written notice stating that this Operating Lease and the term hereby demised shall expire and terminate on the date specified in such notice (which shall be no earlier than five (5) days after receipt of such notice by the defaulting party), and upon the date specified in such notice, this Operating Lease and the term hereby demised, and all rights of the parties hereunder shall expire and terminate as if that date were the date fixed herein for the termination of the term of this Operating Lease; provided, however, that such termination shall not relieve the defaulting party from liability to the other party for damages as may be suffered by reason of its failure to perform in accordance with the terms hereof.

In the event of any default by Lessee, Lessor shall be entitled to cure such default and thereafter Lessee shall indemnify, to the extent permitted by Florida law, Lessor for all costs and expenses incurred thereby, and Lessor shall be entitled to seek specific performance of any covenant herein, or to be compensated for all damages incurred by a breach thereof with interest thereon at two percent (2%) over the Prime Rate of interest in effect for a credit enhancement provider, if any.

If Lessee abandons the Premises or defaults, under circumstances where the Lessor may elect to terminate this Operating Lease, Lessor may elect to terminate Lessee's right to possession only. If Lessor elects to terminate Lessee's right to possession only, without terminating this Operating Lease, Lessor may at Lessor's option enter into the Premises, remove Lessee's property and other evidences of tenancy, and take and hold possession thereof using such force as may be necessary, without being deemed guilty of trespass, eviction or forcible entry or detainer, and without relinquishing Lessor's rights to rent or any other right given to Lessor hereunder or by operation of law. Except for the notice of default required above, Lessee expressly waives the service of any demand for the payment of rent or for possession and the service of any notice of Lessor's election to terminate this Operating Lease or to re-enter the Premises, including any and every form of demand and notice prescribed by any statute or other law. Provided, however, such entry and possession shall not, unless the Lessor so elects, terminate this Operating Lease or release Lessee, in whole or in part, from Lessee's Lease Payment obligations hereunder for the full term, and in any such case Lessee shall pay forthwith to Lessor a sum equal to the entire amount of the Lease Payments reserved under the provision of Section 6 of this Operating Lease for the residue of the stated term plus any other sums then
due hereunder. Upon and after entry into possession without termination of this Operating Lease, Lessor may, but need not, relet the Premises or any part thereof for the account of Lessee to any person, firm or corporation other than Lessee for such rent, for such time and upon such terms as Lessor in Lessor's sole discretion shall determine. Lessor shall not be required to accept any tenant offered by Lessee or to observe any instructions given by Lessee about such reletting. In any such case, Lessor may make repairs, alterations and additions in or to the Premises, and redecorate the same to the extent deemed by Lessor necessary or desirable, and Lessee shall, upon demand, pay the cost thereof, together with Lessor's expenses of the reletting. If the consideration collected by Lessor upon any such reletting for Lessee's account is not sufficient to pay annually the full amount of the Lease Payments reserved in this Operating Lease, together with the costs of repairs, alterations, additions, redecorating and Lessor's expenses. Lessee shall pay to Lessor the amount of each annual deficiency upon demand.

Lessee shall pay upon demand all Lessor's costs, charges and expenses, including the fees of counsel, agents and other retained by Lessor, incurred in enforcing Lessee's obligations hereunder or incurred by Lessor in any litigation, negotiation or transaction in which Lessee causes Lessor, without Lessor's fault, to become involved or concerned.

Section 25. Pledge of Net Revenues. The obligation of the Lessee to make Lease Payments hereunder shall be limited to the Net Revenues and any other trust funds available and not otherwise obligated which are available for purposes of paying Lease Payment obligations hereunder in accordance with Florida law. The Lessee hereby pledges the Net Revenues as security for payment of its Lease Payment obligations hereunder. Lessee hereby covenants and agrees that it shall not issue any obligations in the future having a lien on the Net Revenues that is superior to the rights granted hereunder.

Section 26. Rate Covenant. Lessee hereby agrees to charge each year such rates and fees as are necessary to produce Net Revenues sufficient to pay one-hundred twenty percent (120%) of (i) the Principal Component and the Interest Component of the Base Rent due hereunder during such year, and (ii) any Additional Parity Obligations.

Section 27. Security for the Bonds. Notwithstanding any other provision in this Operating Lease, amounts held in the Housing System Account (herein created and defined) may only be pledged to secure Bonds issued to finance capital improvements relating to the Housing System and amounts held in the Parking System Account (herein created and defined) may only be pledged to secure Bonds issued to finance capital improvements relating to the Parking System.

Separate accounts shall be created in the Revenue Fund for (i) revenues of the Housing System and (ii) revenues of the Parking System.

Section 28. Parity Debt. Lessee will not incur any other obligations, except under the conditions and in the manner provided herein, payable from the Net Revenues, nor voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge, having priority to or being on a parity with the lien of this Operating Lease upon the Net Revenues. Any other obligations incurred by Lessee in addition to the obligations herein
authorized or Additional Parity Obligations provided for below, payable from such revenues, shall contain an express statement that such obligations are junior and subordinate in all respects to the pledge of Net Revenues to secure the Lease Payments under this Operating Lease, as to lien on and source and security for payment from such revenues.

Additional Parity Obligations, payable from the Net Revenues on a parity with Lease Payment obligations presently required under this Operating Lease, may be incurred for the construction and acquisition of additions, extensions and improvements to the Capital Project or for refunding purposes only upon the conditions and in the manner herein provided:

(a) Certificates shall be executed by the Lessee or other appropriate State official setting forth:

(i) the average amount of Net Revenues reasonably expected from the two Fiscal Years immediately following any acquisition, construction, renovation, or replacement of any capital assets or improvements financed with the proceeds of such Additional Parity Obligations taking into account the revenues of the project financed by such Additional Parity Obligations; and

(ii) the Maximum Annual Debt Service on the Bonds then Outstanding and the Additional Parity Obligations then proposed to be issued.

(b) The Lessee must be current in all deposits into the various funds and accounts and all payments theretofore required to have been deposited or made by it under the provisions of this Operating Lease and the Lessee and the University must be currently in compliance with the covenants and provisions of this Operating Lease and any supplemental lease hereafter adopted for the issuance of Additional Parity Obligations, or upon the issuance of such Additional Parity Obligations, the Lessee will be brought into compliance with all such covenants and provisions.

(c) The average amount of Net Revenues for the two immediately succeeding Fiscal Years, as certified by the Lessee or other appropriate State official pursuant to (a)(i) above, will be at least equal to one hundred twenty percent (120%) of the Maximum Annual Debt Service on (i) the Bonds then Outstanding, and (ii) Additional Parity Obligations then proposed to be issued.

In addition, the Lessee may issue or incur obligations secured by or payable out of Net Revenues on a pari passu basis with the Lease Payment obligations of Lessee under this Operating Lease only if, and to the extent that (a) the Operating Lease is not in default and the issuance of such additional obligations would not cause the Operating Lease to be in default and (b) after giving effect to such parity debt obligations, the Lessor would have the ability to issue Additional Parity Obligations in like amount under the terms of the Bonds.

Section 29. Annual Budget. The Lessee and Lessor shall annually prepare and adopt at least fifteen (15) days prior to the beginning of each Fiscal Year, a detailed budget of the estimated expenditures for operation and maintenance of the Capital Project Facilities System
during such next succeeding Fiscal Year. No expenditure for the operation and maintenance of the Capital Project Facilities System shall be made in any Fiscal Year in excess of the amount provided therefor in such budget without a finding and recommendation of the Lessee, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the Capital Project Facilities System, and no such expenditure shall be made until the Lessor shall have approved such finding and recommendation.

Section 30. Application of Capital Project Facilities System Revenues. Upon receipt thereof, Lessee shall transfer all of the Gross Revenues to Lessor. Lessor shall maintain or cause to be maintained, for the purposes stated herein, the following funds hereby established and created, each on a parity with each other:

Revenue Fund;
Separate accounts entitled:
“Housing System Account” and “Parking System Account”
shall be created in the Revenue Fund;
Operation and Maintenance Fund (Plant Fund); and
Debt Service Fund.

The Revenue Fund, the Housing System Account, the Parking System Account, the Operation and Maintenance Fund and the Debt Service Fund and any other special funds or accounts herein established and created shall constitute trust funds for the purposes provided herein for such funds.

The designation and establishment of the various accounts in and by this Operating Lease shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of certain revenues for certain purposes and to establish certain priorities for application of such revenues as herein provided.

The cash required to be accounted for in each of the foregoing funds and accounts established herein may be deposited in a single bank account, and funds allocated to the various accounts established herein may be invested in a common investment pool, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the cash on deposit therein and such investments for the various purposes of such funds and accounts as herein provided.

Moneys on deposit in the Revenue Fund may be invested and reinvested in the manner provided by law provided such investments either mature or are redeemable at not less than par at the option of Lessor not later than the dates on which the moneys on deposit therein will be needed for the purpose of such fund.

The Lessor shall deposit the Gross Revenues or shall cause the Gross Revenues to be deposited, upon receipt thereof, to the Revenue Fund. Such amounts in the Revenue Fund shall be held in the “Housing System Account” and the “Parking System Account” segregated within
the Revenue Fund and such accounts shall be funded by the revenues of the Housing System and Parking System, respectively. Such funds shall be applied by the Lessor in each Fiscal Year, only in the following manner and in the following order of priority:

(1) Lessor shall pay or cause to be paid, as the same shall become due all Costs of Operation and Maintenance of the Capital Project Facilities System for the current Fiscal Year as set forth in the Annual Budget.

(2) Next, there shall be deposited into the Debt Service Fund, (a) those amounts which are estimated as being required to pay the interest due on the Bonds and any Additional Parity Obligations for the current Fiscal Year, and (b) those amounts which are required to pay the principal or purchase price corresponding to the principal due on the Bonds and any Additional Parity Obligations and any other amounts payable under other Related Financing Documents for the current Fiscal Year.

All such payments, as provided above, shall additionally include an amount sufficient to pay all fees and charges incurred during each Fiscal Year in connection with the issuance of the Bonds, the security therefor and the continued payment thereof, all as provided in the Related Financing Documents. Such payments shall be increased or reduced proportionately to the extent required to pay such interest becoming due, after making allowance for the amounts of money which will be deposited in the Debt Service Account out of proceeds from the sale of the Bonds (or Additional Parity Obligations) to pay interest on the Bonds (or Additional Parity Obligations).

(3) Next, the Lessor shall deposit or caused to be deposited into the Operation and Maintenance Fund such sums as shall be earmarked for such purpose in the Annual Budget and such additional sums as set forth in the Related Financing Documents, particularly as set forth in a Credit Facility Agreement.

(4) Lessor shall next apply the balance of the Revenue Fund to any lawful University purpose.

Section 31. Subordination. All of the rights of the Lessee hereunder are and shall be subject and subordinate to the lien of any mortgage or mortgages hereinafter placed on the Lessor's interest in the Master Ground Lease or any part thereof, and to any and all renewals, modifications, consolidations, replacements or substitutions of any such mortgage or mortgages. Such subordination shall be automatic without the execution of any further subordination agreement by the Lessee. If, however, a written subordination agreement consistent with this provision is required by a mortgagee, Lessee agrees to execute, acknowledge and deliver the same. Lessee agrees to attorn to any such mortgagee.

Section 32. Supply of Services. Lessor shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Premises. Except as otherwise provided in Section 15 of this Operating Lease, Lessee hereby assumes full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of
the Premises and warrants to maintain the Premises in an operative condition for the purposes for
which they were intended.

Section 33. Modification. None of the covenants, terms, agreements or conditions of
this Operating Lease shall in any manner be altered, waived, changed or abandoned, nor shall the
term hereof or any part thereof be surrendered except by a written instrument, signed, sealed,
acknowledged and delivered by the parties hereto; provided however, the Exhibits attached
hereto may be amended to provide for the addition of additional property, Capital Projects and
Bonds without a separate written instrument.

Section 34. Invalidity of Particular Provision. If any term or provision of this
Operating Lease or the application thereof to any persons or circumstances shall, to any extent,
be invalid or unenforceable, with the exception of Sections 6 and 7 hereof, the remainder of this
Operating Lease, or the application of such term or provision to persons or circumstances other
than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each
term and provision of this Operating Lease shall be valid and be enforced to the fullest extent
permitted by law.

Section 35. Waivers. Either party to this Operating Lease may, by written notice to
the other party hereto, waive any provision of this Operating Lease. The waiver by any party
hereto of a breach of any provision of this Operating Lease shall not operate or be construed as a
waiver of any subsequent breach.

Section 36. Miscellaneous.

(a) Obligations Limited. The Lessee’s obligation to make payments under
this Operating Lease does not constitute a debt, liability or obligation of the Lessee, the
University, the Board of Governors, the State Board, the State of Florida or any political
subdivision thereof, or a pledge of the faith and credit or taxing power of the State or any
political subdivision thereof. Neither the Lessee nor the State shall be obligated or required to
levy any ad valorem taxes on any property to pay the principal, premium, if any, or interest on
the Bonds or to make payments under this Operating Lease except from the revenues pledged for
the payment thereof, in the manner and on the conditions contained herein. Neither the Bonds
nor this Operating Lease shall constitute a lien upon property owned by or situated within the
territorial limits of the State of Florida.

(b) Laws of Florida Govern. This Operating Lease shall be governed by, and
be construed and enforced in accordance with the laws of the State of Florida without regard to
conflict of laws principles.

(c) Excusable Delays. Except as otherwise expressly provided herein, neither
party shall be responsible for any delay in their performances called for under this Operating
Lease which is caused by acts of God, war, national emergency, strikes, shortages of material, or
governmental regulations or control; provided, however, nothing in this Subparagraph (c) shall
excuse Lessee from the prompt payment of any rental or other charge required of Lessee, except
as may be expressly provided elsewhere in this Operating Lease.
(d) **Time.** Time is of the essence in every particular of this Operating Lease including, but not limited to, obligations for the payment of money.

(e) **Notices.** In every instance where it shall be necessary or desirable for Lessor or Lessee to serve any notice or demand upon the other party hereto, it shall be sufficient (a) to deliver or cause to be delivered by hand a written or printed copy thereof, or (b) to send a written or printed copy thereof by United States registered mail, postage prepaid, addressed to such party at the address noted below, in which event the notice of demand shall be deemed for all purposes to have been served seventy-two (72) hours after the time the copy is mailed:

As to Lessor:

Florida Gulf Coast University Financing Corporation  
10501 FGCU Boulevard South  
Ft. Myers, Florida 33965-6565  
Attention: Executive Director

If to Lessee:

The Florida Gulf Coast University Board of Trustees  
10501 FGCU Boulevard South  
Ft. Myers, Florida 33965-6565  
Attention: Corporate Secretary  
Attention: Office of General Counsel

[credit enhancement provider as may be required under the Indenture]

Either party may advise the other party by proper notice of any change in address or addressee.

(f) **Entire Agreement.** It is mutually acknowledged and agreed by the parties hereto that with the exception of the Master Ground Lease, this Operating Lease contains the entire agreement between Lessor and Lessee with respect to the subject matter of this Operating Lease; that there are no verbal agreements, representations, warranties or other understanding affecting the same; that as a material part of the consideration hereof and to the extent permitted by law, each party hereby waives all claims against the other for rescission, damages or any other form of agreement or understanding not contained in this Operating Lease; and that any purported change, modification, release, discharge or waiver of any provision contained herein shall be of no force, effect, or value, unless set forth in writing and signed by the party to be bound.

(g) **Relationship of the Parties.** Nothing herein contained shall be deemed to create a partnership or joint venture, nor shall the relationship between the parties be construed as principal and agent, or other than Lessor and Lessee. The Operating Lease shall benefit and
bind the parties hereto and their successors and assigns and shall benefit a credit enhancement provider, if any.

(h) **Headings.** The Section headings contained in this Operating Lease are for reference purposes only and shall not affect in any way the meaning or interpretation of this Operating Lease.
IN WITNESS WHEREOF, Lessor and Lessee have caused this Operating Lease to be executed, in duplicate, either of which may be considered an original, the day and year first above written.

LESSOR:

FLORIDA GULF COAST UNIVERSITY
FINANCING CORPORATION

By: ________________________________
    Its: Executive Director

WITNESSES AS TO LESSOR:

Print Name: __________________________

Print Name: __________________________

LESSEE:

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

By: __________________________________
    Its: Corporate Secretary of the University Board

WITNESSES AS TO LESSEE:

Print Name: __________________________

Print Name: __________________________

Print Name: __________________________

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EXHIBIT "A"

PRIOR BONDS

(i) $47,500,000 Capital Improvement Revenue Bonds, Series 2003 (the “Series 2003 Bonds”) were issued on December 10, 2003;

(ii) $8,000,000 Capital Improvement Revenue Bonds, Series 2005A (Housing Project) (the “Series 2005A Bonds”) were issued on February 16, 2005; and

(iii) $6,000,000 Capital Improvement Revenue Bonds, Series 2005B (Parking Project) (the “Series 2005B Bonds”) were issued on February 16, 2005.
EXHIBIT “B”

CURRENT BONDS

Capital Improvement Revenue Bonds, Series 2007A, in a principal amount not to exceed $25,000,000 (the “Series 2007A Bonds”) to finance (i) a new student residence facility, Phase VIII, of approximately 300 beds to be located on the campus of the University; (ii) related capital improvements to the University’s existing housing system; (iii) a food service facility to be located on the campus of the University (collectively, the “Project”); (iv) capitalized interest and (v) certain costs relating to the Series 2007A Bonds
EXHIBIT “C”

DESCRIPTION OF THE PROPERTY

PARCEL “A” - Capital Projects – Housing - Phases I-VI

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

COMMENCING AT THE WEST ONE QUARTER CORNER OF SECTION 14, TOWNSHIP 46 SOUTH, RANGE 25 EAST; THENCE N 88°41'31"W, A DISTANCE OF 354.67 FEET; THENCE S 14°12'35"E, A DISTANCE OF 1,348.50 FEET; THENCE N 88°27'56"E, A DISTANCE OF 2,891.84 FEET; THENCE N 47°45'12"E, A DISTANCE OF 1,504.15 FEET; THENCE N 01°42'48"W, A DISTANCE OF 306.16 FEET; THENCE N 88°17'12"E, A DISTANCE OF 927.78 FEET, TO THE POINT OF BEGINNING; THENCE CONTINUE N 88°17'12"E, A DISTANCE OF 100.00 FEET; THENCE N 03°10'23"W, A DISTANCE OF 430.68 FEET; THENCE N 89°01'42"E, A DISTANCE OF 450.44 FEET; THENCE S 00°58'18"E, A DISTANCE OF 320.18 FEET; THENCE N 88°44'00"E, A DISTANCE OF 1,787.18 FEET; THENCE S 01°16'00"E, A DISTANCE OF 752.01 FEET; THENCE S 59°05'40"W, A DISTANCE OF 480.98 FEET; THENCE N 75°05'46"W, A DISTANCE OF 947.65 FEET; THENCE S 65°52'39"W, A DISTANCE OF 487.08 FEET; THENCE N 45°32'55"W, A DISTANCE OF 777.21 FEET; THENCE N 01°42'48"W, A DISTANCE OF 250.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 45.72 ACRES MORE OR LESS.

PARCEL “B” - Capital Projects – Housing - Phase VII

A TRACT OR PARCEL OF LAND LYING IN SECTION 13, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, AND LYING WITHIN THE BOUNDARY OF FLORIDA GULF COAST UNIVERSITY, SAID TRACT OR PARCEL BEING DESCRIBED AS FOLLOWS:

FROM THE NORTHWEST CORNER OF LANDS DESCRIBED IN OFFICIAL RECORD BOOK 2497 AT PAGE 1564 OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA RUN THE FOLLOWING EIGHT (8) COURSES ALONG THE NORTHERLY LINE OF SAID LANDS: N 88°27'56"E FOR A DISTANCE OF 1,930.23 FEET; N 47°45'12"E FOR A DISTANCE OF 1,504.15 FEET; N 01°42'48"W FOR A DISTANCE OF 306.16 FEET; N 88°17'12"E FOR A DISTANCE OF 1,027.78 FEET; N 03°10'23"W FOR A DISTANCE OF 430.68 FEET; N 89°01'42"E FOR A DISTANCE OF 450.44 FEET; S 00°58'18"E FOR A DISTANCE OF 320.18 FEET; THENCE S 75°05'46"W, A DISTANCE OF 947.65 FEET; THENCE S 65°52'39"W, A DISTANCE OF 487.08 FEET; THENCE N 45°32'55"W, A DISTANCE OF 777.21 FEET; THENCE N 01°42'48"W, A DISTANCE OF 250.00 FEET TO THE POINT OF BEGINNING.
FROM SAID POINT OF BEGINNING CONTINUE N 88°44’00”E FOR A DISTANCE OF 585.87 FEET; THENCE RUN S 00°00’00”W FOR A DISTANCE OF 405.56 FEET; THENCE RUN S 45°00’00”W FOR A DISTANCE OF 19.71 FEET; THENCE RUN N 90°00’00”W FOR A DISTANCE OF 84.87 FEET TO A POINT OF CURVATURE; THENCE RUN WESTERLY ALONG AN ARC OF A CURVE TO THE RIGHT OF RADIUS 100.00 FEET (DELTA 25°32’53”)(CHORD BEARING N 77°13’34”W)(CHORD 44.22 FEET), FOR A DISTANCE OF 44.59 FEET TO A POINT OF REVERSE CURVATURE; THENCE RUN WESTERLY ALONG AN ARC OF A CURVE TO THE LEFT OF RADIUS 100.00 FEET (DELTA 25°32’53”)(CHORD BEARING N 77°13’34”W (CHORD 44.22 FEET), FOR A DISTANCE OF 44.59 FEET; THENCE RUN S 90°00’00”W FOR A DISTANCE OF 398.69 FEET; THENCE RUN N 45°00’00”W FOR A DISTANCE OF 2.80 FEET; THENCE RUN N 00°00’00”E FOR A DISTANCE OF 385.01 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 233,142 SQUARE FEET OR 5.35 ACRES, MORE OR LESS.

BEARINGS HEREIN ABOVE MENTIONED ARE BASED ON STATE PLANE COORDINATES FOR THE FLORIDA WEST ZONE (83/90 ADJUSTMENT) WHEREAS THE NORTHERLY LINE OF LANDS DESCRIBED IN SAID OFFICIAL RECORD BOOK 2497 AT PAGE 1564 BEARS N 88°44’00”E.

PARCEL “C” - Capital Project – Parking Garage I

A TRACT OR PARCEL OF LAND LOCATED AT FLORIDA GULF COAST UNIVERSITY LYING IN SECTION 13, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, WHICH TRACT OR PARCEL IS DESCRIBED AS FOLLOWS:

FROM THE NORTHEAST CORNER OF LANDS DESCRIBED IN DEED RECORDED IN OFFICIAL RECORD BOOK 2491 AT PAGE 1594, PUBLIC RECORDS OF LEE COUNTY, FLORIDA RUN S88°44’00”W ALONG THE NORTH LINE OF SAID LANDS FOR 2,591.04 FEET; THENCE DEPARTING SAID NORTH LINE RUN S01°16’00”E FOR 2,126.24 FEET TO THE POINT OF BEGINNING.

FROM SAID POINT OF BEGINNING RUN S07°43’54”W FOR 116.04 FEET; THENCE RUN N82°16’06”W FOR 257.67 FEET; THEN RUN N07°43’54”E FOR 116.04 FEET; THENCE RUN S82°16’06”E FOR 257.67 FEET TO THE POINT OF BEGINNING.

CONTAINING 29,900 SQUARE FEET (0.69 ACRES), MORE OR LESS.

BEARING HEREIN ABOVE MENTIONED ARE BASED ON THE NORTH LINE OF FLORIDA GULF COAST UNIVERSITY AS DESCRIBED IN DEED RECORDED IN OFFICIAL RECORD BOOK 2497 AT PAGE 1564, PUBLIC RECORDS OF LEE COUNTY, FLORIDA TO BEAR S88°44’00”W.

PARCEL “D” - Capital Projects – Housing - Phase VIII

ALL THAT PART OF SECTION 24, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
COMMENCE AT THE WEST 1/4 CORNER OF SECTION 14, TOWNSHIP 46 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA; THENCE N 88°41'31" W 354.67 FEET; THENCE S 14°12'35" E 1,348.50 FEET; THENCE N 88°27'56" E 961.61 FEET; THENCE N 88°27'56" E 1,930.23 FEET; THENCE N 47°45'12" E 1,504.15 FEET; THENCE N 01°42'48" W 306.16 FEET; THENCE N 88°17'12" E 1,027.78 FEET; THENCE N 03°10'23" W 430.68 FEET; THENCE N. 89°01'42" E. 450.44 FEET; THENCE S. 00°58'18" E. 320.18 FEET; THENCE N 88°44'00" E 3,706.20 FEET; THENCE S 19°49'36" W 1,336.16 FEET; THENCE S 02°55'16" E 211.28 FEET; THENCE S 75°24'23" W 644.69 FEET; THENCE S 01°12'51" E 1,175.90 FEET; THENCE S 40°23'38" W 337.56 FEET; THENCE N 88°17'12" E 202.99 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE N 88°17'12" E 363.83 FEET; THENCE S 41°03'57" E 465.55 FEET; THENCE S 02°13'31" E 339.07 FEET; THENCE S 21°20'50" W 1,025.84 FEET; THENCE S 62°11'53" W 2,704.19 FEET; THENCE N 31°47'37" W 338.71 FEET; THENCE N 32°03'28" E 22.84 FEET; THENCE N 79°13'22" E 66.96 FEET; THENCE N 23°49'51" E 59.57 FEET; THENCE N 52°43'36" E 53.47 FEET; THENCE N 27°33'42" E 52.32 FEET; THENCE N 22°45'21" E 48.99 FEET; THENCE N 67°34'38" W 95.06 FEET; THENCE N 21°54'39" E 124.25 FEET; THENCE N 29°26'23" W 43.58 FEET; THENCE N 61°56'47" E 72.91 FEET; THENCE S 85°20'19" E 61.18 FEET; THENCE S 51°03'34" E 19.12 FEET; THENCE N 41°56'30" E 82.68 FEET; THENCE N 13°24'31" E 37.01 FEET; THENCE N 00°05'37" E 78.92 FEET; THENCE N 43°40'42" E 70.05 FEET; THENCE N 28°02'15" E 48.62 FEET; THENCE N 02°10'45" E 55.64 FEET; THENCE N 44°59'01" E 79.17 FEET; THENCE N 68°30'58" E 69.67 FEET; THENCE N 54°46'50" E 15.19 FEET; THENCE N 04°22'03" E 88.26 FEET; THENCE N 20°03'18" E 153.39 FEET; THENCE N 58°58'56" E 568.50 FEET; THENCE N 54°16'58" E 290.51 FEET; THENCE N 86°43'31" W 243.11 FEET; THENCE N 58°31'59" E 291.17 FEET; THENCE N 29°13'05" E 338.35 FEET; THENCE N 45°20'18" E 245.58 FEET; THENCE N 14°08'36" E 408.36 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED, CONTAINING 76.410 ACRES, MORE OR LESS.
EXHIBIT “D”

DESCRIPTION OF EXISTING IMPROVEMENTS AND CAPITAL PROJECTS

HOUSING SYSTEM

PHASE I

The Phase I improvements are composed of a facility containing approximately 250 bed spaces in apartment style units. Each unit shall contain full kitchen facilities, living room, lavatory and bath facilities, study areas, and appropriate personal storage areas. The Phase I improvements is a multi-story facility using masonry exterior walls, stucco exterior, and poured slab floors. The construction is compliant with Board of Regents Cost Containment Guidelines, all applicable codes and regulations, and other such construction guidelines as appropriate. The Phase I improvements contain laundry facilities, storage facilities, assembly facilities, furnishings, equipment, communications, utilities, infrastructure and other such items as deemed appropriate for proper operation of a university housing facility.

PHASE II, PHASE III, PHASE IV AND PHASE V

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

PHASE VI

The Phase VI improvements are composed of a facility containing three separate three-story buildings containing approximately 288 single-bed spaces in apartment style units. Each unit shall contain full kitchen facilities, living room, lavatory and bath facilities, study areas, personal storage and bedroom areas. The Phase VI improvements will be multistory construction using masonry exterior walls, stucco exterior, and poured slab floors with carpeting and tile finishing and a standing seam metal roof. The Phase VI improvements will contain laundry facilities, storage facilities, assembly facilities, furnishings, equipment, communications and utilities, pool, a volleyball court and other such items as deemed appropriate for proper operation of a University housing facility.
PHASE VII

The Phase VII improvements are composed of a facility containing three separate three-story buildings containing approximately 288 single-bed spaces in apartment style units. Each unit shall contain full kitchen facilities, living room, lavatory and bath facilities, study areas, personal storage and bedroom areas. The Phase VII improvements will be multistory construction using masonry exterior walls, stucco exterior, and poured slab floors with carpeting and tile finishing and a standing seam metal roof. The Phase VII improvements will contain laundry facilities, storage facilities, assembly facilities, furnishings, equipment, communications and utilities, pool, a volleyball court and other such items as deemed appropriate for proper operation of a University housing facility.

PHASE VIII

[Insert Description]

PARKING SYSTEM

The parking structure is a multi-level parking structure with approximately 500 spaces and will consist of approximately 150,550 gross square feet, with a minimum of maintenance closets, janitorial closets, mechanical rooms and elevator space, located on the campus of the University.