Florida Gulf Coast University Board of Trustees
April 17, 2007

SUBJECT: Master Ground Lease to FGCU Foundation, Inc.

PROPOSED BOARD ACTION

Approve Master Ground Lease Agreement to FGCU Foundation, Inc.

BACKGROUND INFORMATION

The Florida Gulf Coast University Foundation, Inc., is a direct support organization of the University. In accordance with Section 1004.28, Florida Statutes, and Florida Gulf Coast University Regulation 6C10-1.005(3), Direct Support Organizations, the Foundation is authorized to construct, purchase and operate facilities necessary and desirable to serve the needs and purposes of the University. Approval of this Master Ground Lease for 3.47 acres located on the main campus, near the Alico Arena, will enable the Foundation to construct an athletic building for use by the University’s athletics teams. The building will be approximately 20,000 square feet. Upon completion, the lease will be terminated and ownership of the facility will be transferred by the Foundation to the Board of Trustees. Upon this Board’s approval, the Master Ground Lease will be forwarded to the Board of Trustees of the State of Florida’s Internal Improvement Trust Fund for their review.

Supporting Documentation Included: Master Ground Lease Agreement

Prepared by: General Counsel Wendy Morris

Legal Review by: N/A

Submitted by: Vice President for Administrative Services and Finance Joe Shepard
THIS MASTER GROUND LEASE AGREEMENT (herein called the "Lease") is made and entered into this _____ day of _______________ 2007, by and between 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"), located at 10501 FGCU Boulevard South, Fort Myers, Florida 33965-6565, and FLORIDA GULF COAST UNIVERSITY FOUNDATION, INC., a Florida not for profit corporation having its principal place of business at 10501 FGCU Boulevard South, Fort Myers, Florida 33965-6565 (the "Foundation" or "Lessee").

WHEREAS, the Foundation was incorporated to provide direct support to the University and is designated as a “University Direct Support Organization” pursuant to §1004.28, Florida Statutes; and

WHEREAS, the Lessor desires to provide for the financing of an athletic facility of the University to be located on land subleased from the University Board pursuant to this Lease, as the same may be amended from time to time secured by the Lessor's obligation, stated herein, to pay for the construction of such facility; and

WHEREAS, the Lessee, at the direction of Lessor, will finance the construction of the FGCU Athletic Building ("Project"), as more fully described in Exhibit "A" hereto; and

WHEREAS, in consideration of the transfers of interest under this Lease, the Foundation is constructing the Project; and

WHEREAS, the University Board and the Foundation have duly approved: (i) the construction of the Project and (ii) this Lease; and

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the parties hereto agree to adopt this 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 "B" 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.

Section 2. Term. The term of this Lease shall commence on the date of delivery hereof and shall terminate within six (6) months of completion of the Project or on June 1, 2009, whichever is later. Notwithstanding the foregoing, under no circumstance shall this 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) Project. The Leased Premises shall be used by Lessee solely for the purpose of constructing the Project 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 the Project to be incorporated therein shall be as set forth in Exhibit "B" attached hereto all of which shall be suitable for use by students, faculty and staff of Lessor. The Project shall further consist of such other support facilities, necessities and amenities (including, but not limited to, parking areas, sidewalks, access roads, meeting rooms, and common areas).

(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 athletic facilities shall not be considered commercial facilities for purposes of this section.

Section 4. Rental. During the term of this 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 the Project within 120 days after final approval by Lessor (and any other parties incidental to financing, construction or design of the 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 120 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, if necessary, or that Lessee has sufficient finances to provide for construction of the Project.

(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 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 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 during the term of this Lease (including, but not limited to, the Project) (collectively, the “Improvements”). Upon the termination of this 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 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 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 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 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.

(b) In the event a lien, claim of lien or order for the payment of money shall be imposed against the Leased Premises, or the 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, and the 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, and the 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.

(a) **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.

(b) **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.

(c) **Lessor's Rights; Use of Proceeds.** Lessor shall deliver to Lessee evidence of insurance at the execution of this 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.

(d) **Waiver of Rights of Subrogration.** 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.

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.
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 athletic 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. No act taken pursuant to or in furtherance of this Lease shall be, or be construed to be, a pledge of the credit of the University Board, 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 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 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 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 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 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 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 the 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 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 Lease, or any possessory right which Lessor may have in or to the Leased Premises or the improvements (including the 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 or the Project 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. Default by Lessee.

(a) Each of the following events shall be deemed a default by Lessee hereunder and a breach of this 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 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 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 for any purposes not expressly permitted by this 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;

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

6. If Lessee shall otherwise fail to comply with any other covenant or condition of this 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.

(b) In the event that any of the items of default set forth in subparagraphs (a)3 and (a)6 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 18. Remedies of Lessor.

(a) Upon the occurrence of any event of default as set forth in Section 17 hereof, Lessor may then terminate this Lease by written notice to Lessee and reenter upon and take possession of the Leased Premises, 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 athletic 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 Lease is terminated pursuant to the provisions of this Section, Lessor shall have the right to utilize any plans and specifications relating to the Project which have been developed by Lessee upon the payment of reasonable compensation to Lessee for the cost thereof.

Section 19. Waivers. No waiver by Lessor at any time of any of the terms, conditions, covenants or agreements of this 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 Lease are cumulative, and no one of them shall be exclusive of the other or exclusive of any remedies provided by law.

Section 20. 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 Lease or any part hereof, or by any judgment or award in any suit or proceeding declaring this 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 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 Lease.
Section 21. 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 Lease, and observing and keeping the agreements and covenants of this 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 Lease, without hinderance or molestation.

Section 22. Terms Binding Upon Successors. All the terms, conditions and covenants of this Lease shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

Section 23. 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 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 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 Lease, such acquisition of title shall terminate this 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 Lease, then this 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 athletic 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 24. 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 Lease is unmodified (or, if there have been any modifications, identifying the same); that this Lease is in full force and effect; and that there is no default hereunder (or, if so, specifying the default).

Section 25. 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 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:

Vice President, Administrative Services and Finance  
Florida Gulf Coast University  
10501 FGCU Boulevard South  
Fort Myers, Florida 33965-6565

With a copy to:

General Counsel  
Florida Gulf Coast University  
10501 FGCU Boulevard South  
Fort Myers, Florida 33965-6565

If to Lessee:

Executive Director  
Florida Gulf Coast University Foundation, Inc.  
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 mailing.

(d) **Entire Agreement.** It is mutually acknowledged and agreed by the parties hereto that this Lease and the exhibits to this Lease contain the entire agreement between Lessor and Lessee with respect to the subject matter of this 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 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 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 Lease.

(g) **Further Assurances.** At and after the execution of this 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 Lease.

**Section 26. Termination.** The Lease cannot extend beyond the term of Lessor’s Lease Agreement with the Board of Trustees described in Section 1 hereof.
IN WITNESS WHEREOF, Lessor and Lessee have caused this 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:

_________________________
Signature  Date
Print Name: ________________________

_________________________
Signature  Date
Print Name: ________________________

NOTARY:

_________________________
Signature  Date
Print Name: ________________________

LESSEE:

FLORIDA GULF COAST UNIVERSITY FOUNDATION, INC.

By: _____________________________
   Its: Executive Director

WITNESSES AS TO LESSEE:

_________________________
Signature  Date
Print Name: ________________________

_________________________
Signature  Date
Print Name: ________________________

NOTARY:

_________________________
Signature  Date
Print Name: ________________________
CONSENT OF THE STATE OF FLORIDA BOARD OF TRUSTEES
OF THE INTERNAL IMPROVEMENT TRUST FUND
(the “Board of Trustees”)
TO MASTER GROUND LEASE AGREEMENT

The Board of Trustees, as title owner of the Leased Premises hereunder, hereby
consents to the foregoing Master 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
EXHIBIT "B"

DESCRIPTION OF THE PROJECT

ATHLETIC BUILDING

The Project will be financed and constructed from Foundation funds and in-kind contributions, and consists of a two-story athletic facility.

The Athletic Building will contain locker rooms for four (4) sports, as well as two (2) coaches locker rooms, an officials locker room, athletic training room, laundry/storage room, equipment storage room, concession area, public restrooms, five (5) office suites, study skills/computer room, conference room, large meeting area, small kitchen area, and a clerical station with attached work space. The Athletic Building improvement is a multi-story facility using masonry exterior walls, stucco exterior, and poured slab floors. The construction is compliant with Board of Governors Cost Containment Guidelines, all applicable codes and regulations, and other such construction guidelines as appropriate. The Athletic Building improvements contain laundry facilities, storage facilities, assembly facilities, furnishings, equipment, communications, utilities, infrastructure and other such items as deemed appropriate for proper operation of an athletic facility.
NOTES:
1. 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.
2. This Sketch does not make any representation as to zoning or development restrictions on the subject parcel.
3. POC = Point of Commencement.
4. POB = Point of Beginning.
5. Desc. = Description
6. Parcel contains 151,135 square feet (3.47 acres) more or less.
7. Description Attached.

CONCESSIONS BUILDING AND SITE PROJECT
FLORIDA GULF COAST UNIVERSITY
(OR. 2497, PG. 1564)

THIS IS NOT A SURVEY

ROBERT L. CARMELLA
FOR THE FIRM LB-642
PROFESSIONAL SURVEYOR AND MAPPER
FLORIDA CERTIFICATE NO. 6548
MAR 09 2007

DATE SIGNED:
NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.

NOT VALID WITHOUT SHEETS 2 AND 3 OF 3.

F.G.C.U.
CONCESSIONS BUILDING AND SITE PROJECT

JOHNSON
ENGINEERING

SKETCH TO ACCOMPANY DESCRIPTION
DATE
3/07/07
PROJECT NO.
20066682
FILE NO.
13-46-25
SCALE
1"=100'
1 OF 3
### LINE TABLE

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NOT VALID WITHOUT SHEETS 1 AND 3 OF 3.
PARCEL IN
SECTION 13, TOWNSHIP 46 SOUTH, RANGE 25 EAST
LEE COUNTY, FLORIDA

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:

Commencing at the northeast corner of lands described in Official Record Book 2497 at Page 1564 of the Public Records of Lee County, Florida thence run S19°49'36"W along the easterly line of said lands for a distance of 192.04 feet to a point; thence run S87°58'02"W departing said easterly line for a distance of 110.99 feet to the Point of Beginning.

From said Point of Beginning run S11°58'34"W for a distance of 193.09 feet to a point; thence run S09°58'13"W for a distance of 102.13 feet to a point; thence run S80°45'14"W for a distance of 37.10 feet to a point; thence run S39°04'14"E for a distance of 25.83 feet to a point; thence run S50°55'46"W for a distance of 16.00 feet to a point; thence run N39°04'14"W for a distance of 35.00 feet to a point; thence run S80°45'14"W for a distance of 50.42 feet to a point; thence run S50°55'46"W for a distance of 78.72 feet to a point; thence run S39°04'14"E for a distance of 22.00 feet to a point; thence run S50°55'46"W for a distance of 16.00 feet to a point; thence run N39°04'14"W for a distance of 22.00 feet to a point; thence run S50°55'46"W for a distance of 90.45 feet to a point; thence run N63°25'23"E for a distance of 43.18 feet to a point; thence run S06°34'37"E for a distance of 16.00 feet to a point; thence run S83°25'23"W for a distance of 12.89 feet to a point; thence run S45°00'00"W for a distance of 85.44 feet to a point of curvature; thence run westerly along an arc of a curve to the right having a radius of 100.00 feet, (delta 73°14'10"), (chord bearing S81°37'05"W), (chord 119.30 feet) for a distance of 127.82 feet to a point of reverse curvature; thence run northwesterly along an arc of a curve to the left having a radius of 173.38 feet, (delta 07°22'07"), (chord bearing N65°26'54"W), (chord 22.28 feet) for a distance of 22.30 feet to the beginning of a non tangent line; thence run N68°38'46"W for a distance of 7.27 feet to an intersection with a non tangent curve; thence run westerly along an arc of a curve to the left having a radius of 221.73 feet, (delta 44°55'23"), (chord bearing S87°57'11"W), (chord 169.43 feet) for a distance of 173.85 feet to a point of compound curvature, thence run southwesterly along an arc of a curve to the left having a radius of 126.60 feet, (delta 34°03'43"), (chord bearing S48°27'37"W), (chord 74.16 feet) for a distance of 75.26 feet to the beginning of a non tangent line; thence run N90°00'00"W for a distance of 47.19 feet to a point; thence run N00°00'00"E for a distance of 92.70 feet to a point; thence run N19°16'32"W for a distance of 21.08 feet to a point; thence run S90°00'00"W for a distance of 4.00 feet to a point; thence run N00°00'00"E for a distance of 251.97 feet to a point; thence run N90°00'00"E for a distance of 51.57 feet to a point; thence run S30°37'33"E for a distance of 91.66 feet to a point; thence run S59°22'27"W for a distance of 54.29 feet to a point; thence run S03°47'39"W for a distance of 32.21 feet to a point; thence run S48°28'12"E for a distance of 54.03 feet to a point; thence run S48°39'04"E for a distance of 36.09 feet to a point; thence run S72°54'10"E for a distance of 72.01 feet to a point; thence run N90°00'00"E for a distance of 128.86 feet to a point; thence run N49°16'04"E for a distance of 35.83 feet to a point; thence run N20°13'23"E for a distance of 48.90 feet to a point; thence run N06°40'35"W for a distance of 30.71 feet to a point; thence run N50°55'46"E for a distance of 48.37 feet to a point; thence run N35°48'02"E for a distance of 24.23 feet to a point; thence run N03°02'02"E for a distance of 56.14 feet to a point; thence run N36°09'21"E for a distance of 125.41 feet to an intersection with a non tangent curve; thence run northeasterly along an arc of a curve to the right having a radius of 11.00 feet, (delta 62°30'08"), (chord bearing N65°28'09"E), (chord 11.41 feet) for a distance of 12.00 feet to a point of tangency; thence run S83°16'48"E for a distance of 67.57 feet to a point; thence run N90°00'00"E for a distance of 5.94 feet to a point; thence run S00°00'00"E for a distance of 18.42 feet to a point; thence run N90°00'00"E for a distance of 54.60 feet to a point; thence run N00°00'00"E for a distance of 14.25 feet to a point; thence run N44°59'59"E for a distance of 16.62 feet to a point; thence run N04°24'50"W for a distance of 8.28 feet to a point; thence run N44°52'33"E for a distance of 38.72 feet to a point; thence run N34°04'04"E for a distance of 75.13 feet to a point; thence run N87°58'02"E for a distance of 60.41 feet to the Point of Beginning.

Parcel Contains 151,135 square feet or 3.47 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.

NOT VALID WITHOUT SHEETS 1 AND 2 OF 3.