





**RETURN THIS DOCUMENT TO:**

Office of General Counsel  
Florida Gulf Coast University  
10501 FGCU Blvd. South  
Fort Myers, FL 33965-6565

**MEMORANDUM OF AGREEMENT**

**THIS MEMORANDUM OF AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_, 2006, by the **FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES**, a public body corporate, for and on behalf of FLORIDA GULF COAST UNIVERSITY, having an address of 10501 FGCU Boulevard South, Fort Myers, Florida 33965-6565 (“FGCU”) and the **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**, a public body existing under Chapter 373, *Florida Statutes*, having an address of 3301 Gun Club Road, West Palm Beach, Florida 33406 (“District”) (at times FGCU and the District are collectively referred to herein as the “Parties”).

**WITNESSETH:**

**WHEREAS**, FGCU is the successor lessee to that certain Lease Agreement Number 4051 dated November 15, 1994, by and between the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida and the Florida Board of Regents (the “Lease”), of certain real property located in Lee County, Florida, more particularly described in Exhibit “A” attached hereto and made a part hereof; and

**WHEREAS**, the Parties have agreed that FGCU will provide for the District’s purposes certain rights and restrictions upon certain real property located in Lee County, Florida more particularly described in Exhibit “B” attached hereto and incorporated herein by this reference (the “Conservation Areas”) for the purpose of preserving, enhancing, restoring and/or mitigating wetlands and/or uplands under the District’s jurisdiction as required by District Permit No. 36-02881-S (the “Permit”), as originally issued by the District on April 13, 1995, and as such Permit has been or may be subsequently amended; and

**WHEREAS**, FGCU, in consideration of the District’s consent to activities granted by the Permit, is agreeable to granting and securing to the District the same rights and restrictions as those defined for a conservation easement in Section 704.06, *Florida Statutes*, over the Conservation Areas, for a period coterminous with the Lease, including any renewals or extensions thereof; and

**WHEREAS**, FGCU desires to preserve the Conservation Areas in their natural condition for so long as FGCU has an interest in the Conservation Areas; and

**WHEREAS**, FGCU has agreed to enter into this Memorandum of Agreement as required by the conditions relating to mitigation of wetland impacts imposed under the Permit as further described below upon the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both Parties, FGCU hereby agrees that the rights and restrictions provided for pursuant to the provisions of Section 704.06, *Florida Statutes*, are hereby created and established for and in favor of the District upon the Conservation Areas which shall run with the land and be binding upon FGCU, and shall remain in full force and effect for a period coterminous with the Lease, including any renewals or extensions thereof (the "Lease Period"), of the nature and character and to the extent hereinafter set forth.

1. Purpose. The purpose of this Memorandum of Agreement is to assure that the Conservation Areas will be retained during the Lease Period in their existing natural condition and to prevent any use of the Conservation Areas that will impair or interfere with the environmental value of the Conservation Areas.

2. Authority. FGCU warrants that it has the full power and authority to enter into this Memorandum of Agreement and will warrant and defend the rights and interest in the Conservation Areas granted herein to the District against the lawful claims of all persons whomsoever during the Lease Period.

3. Interest Granted. FGCU agrees that its leasehold interest in the Conservation Areas created under the Lease shall be subject to the restrictions placed upon the Conservation Areas pursuant to this Memorandum of Agreement.

4. Permit Conditions. The District agrees that in accordance with Rule 40E-4, F.A.C., and the Basis of Review of the District's Environmental Resource Permit Information Manual, Volume IV, the rights and interest in the Conservation Areas granted to the District under this Memorandum of Agreement are sufficient to satisfy conditions relating to mitigation of wetland impacts imposed under the Permit.

5. Prohibited Uses. Except as may be authorized by the Permit or any modification thereof, FGCU agrees not to undertake or authorize any activity on or use of the Conservation Areas inconsistent with the purpose of this Memorandum of Agreement. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) Constructing or placing buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground.

(b) Dumping or placing soil or other substance or material as landfill or dumping or placing of trash, waste or unsightly or offensive materials.

(c) Removing, trimming, or destroying trees, shrubs or other vegetation.

(d) Excavating, dredging or removing loam, peat, gravel, soil, rock or other material substances in such a manner as to affect the surface.

(e) Surface use, except for purposes that permit the land or water area to remain predominantly in its natural condition.

(f) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation or fish and wildlife habitat preservation.

(g) Acts or uses detrimental to such retention of land or water areas.

(h) Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological or cultural significance.

6. Reserved Rights. FGCU reserves unto itself, and its successors and assigns the following rights:

(a) All rights accruing from the Lease, including the right to engage in or permit or invite others to engage in all uses of the Conservation Areas that are not expressly prohibited herein and are not inconsistent with the purpose of this Memorandum of Agreement.

(b) All rights to undertake any and all activities specifically authorized by the Permit.

7. Rights of the District. To accomplish the purposes stated herein, FGCU conveys the following rights to the District:

(a) To enter upon and inspect the Conservation Areas in a reasonable manner and at reasonable times to determine if FGCU or its successors and assigns are complying with the covenants and prohibitions contained in this Memorandum of Agreement.

(b) To proceed at law or in equity to enforce the provisions of this Memorandum of Agreement and the covenants set forth herein, to prevent the occurrence of any of the prohibited activities set forth herein and require the restoration of areas or features of the Conservation Areas that may be damaged by any activity inconsistent with this Memorandum of Agreement, or to seek such relief permitted by law.

8. District's Discretion. The District may enforce the terms of this Memorandum of Agreement at its discretion, but if FGCU breaches any term of this Memorandum of Agreement and the District does not exercise its rights under this Memorandum of Agreement, the District's forbearance shall not be construed to be a waiver by the District of such term, or of any subsequent breach of the same, or any other term of this Memorandum of Agreement, or of any of the District's rights under this Memorandum of Agreement. No delay or omission by the District in the exercise of any right or remedy upon any breach by FGCU shall impair such right or remedy or be construed as a waiver. The District shall not be obligated to FGCU, or to any other person or entity, to enforce the provisions of this Memorandum of Agreement.

9. Liability. Each of the Parties to this Memorandum of Agreement is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that Party and that Party's officers and employees acting within the scope of their employment. In addition, each of the Parties is subject to the provisions of Section 768.28, *Florida Statutes* (2005). Neither this provision nor any other provision in this Memorandum of Agreement shall be construed as a waiver of sovereign immunity by either Party.

10. Acts Beyond FGCU's Control. Nothing contained in this Memorandum of Agreement shall be construed to entitle the District to bring any action against FGCU for any injury to or change in the Conservation Areas resulting from natural causes beyond FGCU's control, including, without limitation, fire, flood, storm and earth movement, or from any necessary action taken by FGCU under emergency conditions to prevent, abate or mitigate significant injury to the Conservation Areas or to persons or real property or improvements thereon resulting from such causes.

11. Master Plan. FGCU agrees that the Conservation Areas will be designated and that the land use restrictions placed upon the Conservation Areas under this Memorandum of Agreement will be incorporated into Florida Gulf Coast University's Campus Master Plan (the "Master Plan") adopted pursuant to Section 1013.30, *Florida Statutes* (2005), and FGCU further agrees that no amendment or modification of any of these restrictions placed into the Master Plan will be made during the term of this Memorandum of Agreement as defined above without prior consultation with the District and the District's prior written approval.

12. Successors. The covenants, terms, conditions and restrictions of this Memorandum of Agreement shall be binding upon FGCU's leasehold interest in the Conservation Areas created under the Lease and shall inure to the benefit of the Parties and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running with FGCU's leasehold interest in the Conservation Areas created under the Lease for the Lease Period.

13. Enforcement of Permits. Nothing in this Memorandum of Agreement shall limit the District's authority to enforce the Permit pursuant to Chapter 373, *Florida Statutes* and the District's rules thereunder.

14. Amendments. This Memorandum of Agreement may only be amended by written agreement of the Parties. However, additional Conservation Areas may be added and made subject to this Memorandum of Agreement upon execution of an amendment by FGCU and the District's Executive Director or his designee on behalf of the District.

**IN WITNESS WHEREOF**, the Parties have executed this Memorandum of Agreement on the day and year first above written.

**FGCU:**

Signed, sealed and delivered  
in the presence of:

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

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Scott Lutgert,  
Chairman

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Executed on \_\_\_\_\_, 2006

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

BEFORE ME, an officer duly authorized to take acknowledgments in the State and County aforesaid, personally appeared Scott Lutgert, to me personally known and known to me to be the Chairman of THE FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES, a public body corporate, who being duly authorized, executed the foregoing document, and acknowledged before me that he executed the same on behalf of THE FLORIDA GULF COAST UNIVERSITY BOARD OF TRUSTEES.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
(Print Name)  
(NOTARIAL SEAL)

NOTARY PUBLIC  
My Commission Expires:

**THE DISTRICT:**

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

By: \_\_\_\_\_  
Name: Kevin McCarty,  
Chairman

ATTEST: Executed on \_\_\_\_\_, 2006

By: \_\_\_\_\_  
Name: \_\_\_\_\_,  
Secretary

STATE OF FLORIDA  
COUNTY OF PALM BEACH

BEFORE ME, an officer duly authorized to take acknowledgments in the State and County aforesaid, personally appeared Kevin McCarty, to me personally known and known to me to be the Chairman of the SOUTH FLORIDA WATER MANAGEMENT DISTRICT, a public body existing under Chapter 373, Florida Statutes, who being duly authorized, executed the foregoing document, and he acknowledged before me that he executed the same on behalf of the SOUTH FLORIDA WATER MANAGEMENT DISTRICT.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

(Print Name \_\_\_\_\_)  
(NOTARIAL SEAL)

NOTARY PUBLIC  
My Commission Expires:

**EXHIBIT "A"**  
**Legal Description of FGCU**

**EXHIBIT "B"**  
**Conservation Areas Legal Descriptions**