

## NEW ISSUE

RATING: S&amp;P "BB+"

See "RATING" herein

*In the opinion of Bond Counsel, under existing law, regulations and judicial decisions, and assuming continued compliance with the Internal Revenue Code of 1986, as amended, interest on Bonds is excluded from gross income for Federal income purposes. Ownership of the Bonds by certain classes of taxpayers, however, may have certain adverse consequences. See "Tax Matters" herein. It should be noted that Bond Counsel has expressed no opinion with respect to any exemption from any taxes imposed by the State of Florida or any other state on the Bonds or the interest or income thereon.*

**\$8,305,000**

**FLORIDA KEYS COLLEGE CAMPUS FOUNDATION, INC.  
SENIOR LEASEHOLD INDUSTRIAL DEVELOPMENT REVENUE BONDS  
(Florida Keys Community College Project)  
Series 2010**

**Dated: Date of Issuance of Bonds**

**MATURITIES, AMOUNTS, INTEREST RATES AND PRICES OR YIELDS:  
\$8,305,000 Series 2010**

<u>Due</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Price</u>
11/01/2042	\$8,305,000	7.000%	98.00%

**(See herein)**

Florida Keys College Campus Foundation, Inc. (the "Issuer") will issue its Senior Leasehold Industrial Development Revenue Bonds (Florida Keys Community College Project), Series 2010 (the "Bonds") in the amount of \$8,305,000, as fully registered Bonds in denominations of \$5,000.00. The Issuer will issue the Bonds to (1) acquire a leasehold interest in approximately one-half ( $\pm .53$ ) acre of land located on the campus of Florida Keys Community College (the "College") in Monroe County, Florida; (2) the construction thereon of a one hundred (100) bed college dormitory facility (the "Facility") for the benefit of the College; and (3) the payment of the costs incidental thereto including the costs of issuing the Bonds, and to fund capitalized interest and reserves for the payment of the Bonds to the extent required (hereinafter, collectively, the "Project").

The Bonds will be dated the date of issuance and are issuable as book entry only bonds registered in the name of Cede & Co. in the denominations of \$5,000. Principal is payable at maturity upon presentation and surrender of a bond at the principal office of Zions First National Bank (the "Trustee"). Semiannual interest (due November 1 and May 1, with the first such payment due on May 1, 2011) is payable by check or bank draft mailed to the respective addresses of the Bondholders as they appear on the registration books of the Trustee on the Record Date (as defined herein).

**THE BONDS SHALL NOT BE A DEBT OF FLORIDA KEYS COMMUNITY COLLEGE, NOR OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER FLORIDA KEYS COMMUNITY COLLEGE, NOR THE STATE OF FLORIDA NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL THE BONDS BE PAYABLE OUT OF ANY FUNDS OTHER THAN THOSE OF THE ISSUER RELATING TO THE PROJECT, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN THE INDENTURE. THE BONDS SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT OR BOND LIMITATION OR RESTRICTION. THE COLLEGE AND ISSUER HAVE NO TAXING POWER.**

The Bonds are payable solely from the rents and other Revenues, as hereinafter defined, and are secured solely by an assignment and a pledge of such rents and other Revenues from the Project, and by a leasehold mortgage upon the Project, all as provided in the Trust Indenture between the Issuer and the Trustee dated as of November 1, 2010.

**INVESTMENTS IN THE BONDS INVOLVE A SIGNIFICANT AMOUNT OF RISK. (See "Bondholders' Risks" herein). THE BONDS HAVE NOT BEEN QUALIFIED UNDER THE SECURITIES OR "BLUE SKY" LAWS OF THE UNITED STATES OR OF ANY STATE OF THE UNITED STATES. THE BONDS MAY OR MAY NOT BE EXEMPT FROM QUALIFICATION OR REGISTRATION UNDER THE LAWS OF ANY PARTICULAR STATE, AND NO REPRESENTATION IS MADE THAT THE BONDS, OR ANY TRANSACTION IN WHICH THEY MAY BE OFFERED OR SOLD, ARE EXEMPT.**

The Bonds are subject to optional redemption, to sinking fund redemption and to special mandatory redemption in certain circumstances, all prior to maturity, as described herein.

The Bonds are offered when, as and if issued by the Issuer and accepted by the Underwriter, subject to prior sale, withdrawal or modifications of the offer without notice, and the approval of legality by Sell & Melton, L.L.P., Macon, Georgia, Bond Counsel. Certain legal matters will be passed upon for the Underwriter by its counsel, Hill Wallack LLP, Princeton, New Jersey, for the Issuer and the College by their counsel, DeVane & Dorl, P.A., Marathon, Florida. The Bonds are expected to be available for delivery in New York, New York on or about November 12, 2010.

NO DEALER, BROKER, SALESMAN OR OTHER PERSON HAS BEEN AUTHORIZED BY THE ISSUER OR THE UNDERWRITER TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS WITH RESPECT TO THIS OFFERING, OTHER THAN THOSE CONTAINED IN THIS OFFICIAL STATEMENT, AND, IF GIVEN OR MADE, SUCH OTHER INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY ANY OF THE FOREGOING. THIS OFFICIAL STATEMENT DOES NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY, NOR SHALL THERE BE ANY SALE OF THE BONDS BY ANY PERSON IN ANY STATE IN WHICH IT IS UNLAWFUL FOR SUCH PERSON TO MAKE SUCH OFFER, SOLICITATION OR SALE. NONE OF THE INFORMATION IN THIS OFFICIAL STATEMENT HAS BEEN SUPPLIED OR VERIFIED BY THE ISSUER, THE UNDERWRITER OR THE TRUSTEE, AND NONE OF THE ISSUER, THE UNDERWRITER OR THE TRUSTEE MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO (I) THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION; (II) THE VALIDITY OF THE BONDS; OR (III) THE TAX STATUS OF THE INTEREST ON THE BONDS. THE INFORMATION AND EXPRESSIONS OF OPINION CONTAINED HEREIN ARE SUBJECT TO CHANGE WITHOUT NOTICE, AND NEITHER THE DELIVERY OF THIS OFFICIAL STATEMENT NOR ANY SALE MADE HEREUNDER SHALL, UNDER ANY CIRCUMSTANCES, CREATE ANY IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE AFFAIRS OF THE ISSUER SINCE THE DATE HEREOF.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

NO SALES MAY BE MADE UNTIL A COPY OF THE FINAL OFFICIAL STATEMENT HAS BEEN DELIVERED TO AND REVIEWED BY THE PROSPECTIVE INVESTOR. INDICATIONS OF INTEREST IN AN INVESTMENT ARE TENTATIVE AND NOT BINDING ON THE CUSTOMER PRIOR TO HIS OR HER RECEIPT AND REVIEW OF THE FINAL OFFICIAL STATEMENT.

THE BONDS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, NOR HAS THE INDENTURE BEEN QUALIFIED UNDER THE TRUST ACT OF 1939, IN RELIANCE UPON EXEMPTIONS CONTAINED IN SUCH ACTS, THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION, NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFICIAL STATEMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE ISSUER HAS NOT REVIEWED OR APPROVED, AND DOES NOT REPRESENT OR WARRANT IN ANY WAY, THE ACCURACY OR COMPLETENESS OF ANY OF THE INFORMATION SET FORTH IN THIS OFFICIAL STATEMENT, INCLUDING THE APPENDICES, (OTHER THAN THE STATEMENTS AND INFORMATION SET FORTH UNDER THE SECTIONS ENTITLED "THE ISSUER" AND "LITIGATION", AS IT PERTAINS TO THE ISSUER).

THIS OFFICIAL STATEMENT MAY BE AMENDED OR SUPPLEMENTED TO INDICATE MATERIAL CHANGES.

**ISSUER**

Florida Keys College Campus Foundation, Inc.  
Key West, Florida

**COLLEGE**

Florida Keys Community College  
Key West, Florida

**ISSUER'S and COLLEGE'S COUNSEL**

DeVane & Dorl, P.A.  
Marathon, Florida

**BOND COUNSEL**

Sell & Melton, L.L.P.  
Macon, Georgia

**TRUSTEE**

Zions First National Bank  
Denver, Colorado

**UNDERWRITER**

Bergen Capital,  
a Division of Scott & Stringfellow, LLC  
Hasbrouck Heights, New Jersey

**UNDERWRITER'S COUNSEL**

Hill Wallack LLP  
Princeton, New Jersey

**DEVELOPER**

Student Suites South Florida, LLC  
Independence, Missouri

**FINANCIAL ADVISOR**

Kraig Consulting, LLC  
Arvada, Colorado

**CONSULTANT**

MGT of America, Inc.  
Athens, Georgia

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**\$8,305,000**  
**FLORIDA KEYS COLLEGE CAMPUS FOUNDATION, INC.**  
**Senior Leasehold Industrial Development Revenue Bonds**  
**(Florida Keys Community College Project)**  
**Series 2010**

**INTRODUCTION**

This Official Statement (the “Official Statement”) including the cover hereof and the Appendices hereto, set forth certain information in connection with the issuance and sale of \$8,305,000 Senior Leasehold Industrial Development Revenue Bonds, Series 2010 (Florida Keys Community College Project) (the “Bonds”) by the Florida Keys College Campus Foundation, Inc. (the “Issuer”), a Florida a not-for-profit corporation duly organized and existing under the laws of the State of Florida (the “State”) for the benefit of Florida Keys Community College (the “College”), a political subdivision duly created and existing under the Constitution and laws of the State. All such Bonds are herein collectively, together with any Additional Bonds hereafter defined, referred to as the “Bonds”. The Bonds are issued pursuant to a Trust Indenture dated as of November 1, 2010 (the “Indenture”) between the Issuer and Zions First National Bank, Denver, Colorado, as Trustee (the “Trustee”) and pursuant to a resolution adopted by the Issuer. (Capitalized terms not otherwise defined herein shall have the same definitions as are set forth in the Indenture.) The Bonds are secured as provided in the Indenture and in a Leasehold Mortgage and Security Agreement dated as of November 1, 2010, from the Issuer to the Trustee (the “Mortgage”) which Mortgage shall be a first lien on the Project hereafter defined. Additional Bonds (the “Additional Bonds”) under certain circumstances, may also be issued under the Indenture, on a parity with the Bonds.

The Bonds are being issued to (1) acquire a leasehold interest in approximately one-half (± .53\_ acre of land located on the campus of Florida Keys Community College (the “College”) in Monroe County, Florida; (2) the construction thereon of a one hundred (100) bed college dormitory facility (the “Facility”) for the benefit of the College; and (3) the payment of the costs incidental thereto including the costs of issuing the Bonds, and to fund capitalized interest and reserves for the payment of the Bonds to the extent required. See “The Project” herein.

Each Bond is a limited obligation of the Issuer, and the principal, premium, if any, and interest thereon are payable solely from rents, revenues and other amounts derived by the Issuer from the Project, as defined and pledged and assigned to the Trustee under the Indenture (the “Revenues”). THE BONDS SHALL NOT BE A DEBT OF FLORIDA KEYS COMMUNITY COLLEGE, NOR OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER FLORIDA KEYS COMMUNITY COLLEGE, NOR THE STATE OF FLORIDA NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL THE BONDS BE PAYABLE OUT OF ANY FUNDS OTHER THAN THOSE OF THE ISSUER RELATING TO THE PROJECT, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN THE INDENTURE. THE BONDS SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT OR BOND LIMITATION OR RESTRICTION. THE COLLEGE AND ISSUER HAVE NO TAXING POWER. The Bonds are secured by the Mortgage. The Bonds are also payable from, and secured by the revenues, receipts and security pledged therefore under the Indenture, in the manner set forth in the Indenture. Only the Bonds are secured by the Reserve Account established thereunder.

Additional Bonds. Under the terms and conditions set forth in the Indenture, the Issuer may issue Additional Bonds under certain circumstances secured on a parity with the Bonds or on a parity with the Subordinated Bonds (See “Additional Bonds” herein).

**Bondholder Risk.** INVESTMENT IN THE BONDS INVOLVES A SIGNIFICANT AMOUNT OF RISK. See “BONDHOLDERS’ RISK” and “SECURITY FOR THE BONDS” herein.

Brief descriptions of the Issuer, the College, the Bonds, the security for the Bonds and forms of the Indenture and the Mortgage are hereinafter set forth below. Such summaries do not purport to be complete or definitive, and each such summary is qualified in its entirety by reference to each such document.

### **RATE COVENANT**

The Issuer shall fix the charges for the operation of the Facility at rates that it shall find to be necessary in order to produce revenues in each Fiscal Year which, together with all other available moneys, revenue, income and receipts of the Issuer constituting Revenues (i) will equal at least 120% of the amount necessary to pay, as the same shall become due, the principal, premium, if any, and interest due in such year on the Bonds after setting aside an amount necessary to pay those costs described in clauses (i) and (ii) of Section 5.06(b) of the Indenture for such year (being any required deposit to the Rebate Fund, and the deposits to the Operating and Maintenance Fund required by the Budget of the Issuer for such period, exclusive of the amounts required to be paid to the Repair and Replacement Reserve Account) (said percentage being the “Debt Service Coverage Ratio”) and (ii) will equal a Debt Service Coverage Ratio of at least 105% of the maximum debt service requirement coming due in such year with respect to the Bonds, after setting aside an amount necessary to pay those costs described in clauses (i) through (vii) of Section 5.06(b) of the Indenture for such year (being any required deposit to the Rebate Fund, all of the expenses of operating and maintaining the Project for such year, and debt service on the Bonds for such year, including any required deposits to the Reserve Account); provided that a failure to comply with the provisions of this clause (ii) shall not constitute a default hereunder or in anywise affect the provisions hereof with respect to the Bonds. Such charges shall be increased to the extent necessary to also produce Revenues sufficient to provide for all other payments required under the Indenture.

### **DAYS’ CASH ON HAND**

The Issuer agrees to have, as of the beginning of each fiscal quarter, beginning with such quarter starting on November 1, 2012, not less than ninety (90) Days’ Cash on Hand. If Days’ Cash on Hand, as calculated at the end of any two (2) consecutive fiscal quarters, shall be less than the required level, the Issuer agrees to retain a Management Consultant, within sixty (60) days following the end of the second of such fiscal quarters, to evaluate the management of the Facility and to make recommendations with regard to increasing Days’ Cash on Hand for subsequent fiscal quarters of the Issuer to at least the level required or, if in the opinion of the Management Consultant the attainment of such level is impracticable, to the highest practicable level. So long as the Issuer shall retain a Management Consultant and shall have, for each fiscal quarter, not less than seventy percent (70%) of the Days’ Cash on Hand otherwise required by this paragraph, the requirements of this paragraph shall be deemed to have been satisfied.

Days’ Cash on Hand shall mean the number determined as of the last day of each fiscal quarter of the Issuer by (A) multiplying (i) the number of days in such fiscal quarter by (ii) the amount of cash and cash equivalents (determined by reference to the Issuer’s financial statements for each such date), and (B) dividing the amount determined in clause (A) by an amount equal to the total operating expenses of the Facility for such fiscal quarter, less any bad debts to the extent included in such operating expenses and all depreciation and amortization attributed to the Facility for such fiscal quarter.



## MARKET ANALYSIS

A Market Analysis of Income & Expenses relating to the Project dated September 19, 2010 was prepared by TEXLA Housing Partners, LLC (“TEXLA”) (the “Market Analysis”). TEXLA independently reviewed the Key West, Florida rental market as well as the proposed income and expenses of the Project and concluded the “supply/demand metrics are sufficient at the proposed pricing to support construction of the 100-bed project.” The Market Analysis is attached hereto as APPENDIX D.

## FINANCIAL PRO FORMA

A financial pro forma for the Project was prepared by Kraig Consulting, LLC, Arvada, Colorado, dated October 8, 2010 (the “Financial Pro Forma”) is attached hereto as APPENDIX F. The underlying assumptions pertaining to the Financial Pro Forma are available at the office of the Underwriter.

**The Financial Pro Forma is based upon assumptions which may or may not occur. As a forward-looking statement it is subject to uncertainty and risks that could cause actual results to differ, possibly materially, from those contemplated in such forward-looking statements. Inevitably, some assumptions used to develop forward-looking statements will not be realized or anticipated events and circumstances may not occur. Therefore, investors should be aware that there are likely to be differences between the forward-looking statements and actual results; those differences could be material.**

## PLAN OF FINANCING

The Issuer, acting on behalf of the College, is issuing the Bonds to finance the costs of constructing the Facility, funding various funds, and paying costs of issuance for the Project.

### Reversion to the College

At the time that all Bonds are discharged (as defined in Section 12.13 of the Indenture), all moneys and securities remaining in the various funds and accounts under the Indenture (except for amounts and securities pledged to the Trustee by the Issuer to defease the Bonds) shall inure, at the option of the College, to the benefit of the College, free of all charge, lien or encumbrance, and the Facilities shall, at the option of the College, revert to the College, free of the lien of the Indenture and of the leases which the Issuer may have entered into with the tenants thereof, and free of all other charges, liens or encumbrances, including leases, management contracts and other similar encumbrances.

## THE ISSUER

Florida Keys College Campus Foundation, Inc. (“the Issuer”) is a not for profit corporation which was incorporated on May 10, 2010 for the purpose of receiving, investing and administering real and personal property including, but not limited to, the construction of college dormitories for up to 100 beds; making expenditures to or for the exclusive benefit of the Issuer and/or College; and applying all property received, as well as the income it produces, to 501(c)(3) organizations. The Issuer is duly organized and existing under the laws of the State and is an organization described by and is in compliance with the requirements set forth in IRS Revenue Ruling 63-20. The only assets of the Issuer which are pledged to secure the Bonds constitute the Project. (See “Bondholders’ Risks” herein.) The College approved the organization of the Issuer and approved the terms of the Bonds by Resolution. (The resolution is referred to as the “Sponsorship Resolution”.) Pursuant to such Sponsorship Resolution, the College approved the following persons as members of the Issuer:

*John Kehoe.* Dr. Kehoe serves as the Vice President for Financial and Administrative Services at Florida Keys Community College. He has extensive experience in higher education finance, research and budgeting with previous positions at public and private as well as two and four-year higher education institutions as well as service at state governing and coordinating entities. Such service included executive assistant to the Vice President for Finance and Executive Vice President at the University of Pennsylvania, Associate Budget Director at Penn State University, Associate Director for Operations at the National Center on Postsecondary Teaching, Learning, and Assessment (an OERI funded project located at Penn State). Additionally Dr. Kehoe served as the Finance Director for the Louisiana Board of Trustees for State Colleges and Universities, Director of Strategic Planning and Research at Pennsylvania College of Technology and served as a research associate within the office of the Deputy Secretary for Higher Education at the Pennsylvania Department of Education. Dr. Kehoe earned his Ph.D. at the Pennsylvania State University, a M.Ed. at Boston University and his B.S. at Seton Hall University.

*Anne O'Bannon.* See "THE COLLEGE – Anne O'Bannon" below for Ms. O'Bannon's biography.

*Dave Monroe.* Mr. Monroe served in the United States Navy from 1987 to 1996, a veteran of Operation Desert Shield and Operation Desert Storm. He served as the Director of Information Systems for two different companies located in Central Florida and served as the Chief Financial Officer for a real estate investment group until 2008 when he was hired by the College as the Executive Director of Finance and Information Systems. Mr. Monroe received his Bachelor of Science in Computer Information Systems from Saint Leo University and received a Master of Business Administration from Webster University.

All members' terms expire on May 10, 2011 or until a new member is appointed.

The Issuer's address is 5901 West College Road, Key West, Florida 33040. The Issuer's Trustees are not and will not be liable for any payments on the Bonds.

### **THE COLLEGE**

Florida Keys Community College was established in 1965 and is located in Key West, Florida with its main campus on Stock Island and with two additional campuses located in Marathon and Key Largo as well as a virtual campus. The College offers two year Associates degrees in various program including unique programs in Marine Technology, Marine Environmental Technology and Diving Business. It also offers Bachelor's and Master's degrees in Management through an agreement with Hodges University and operates the Tennessee Williams Fine Arts Center. Within four years the College intends to expand from a two year college to a four (4) year college. The College is accredited by the Commission of Colleges of the Southern Association of Colleges and Schools. The College's mission is to be "an open-access, educational institution dedicated to serving the intellectual, diverse, cultural, and occupational needs of the Florida Keys as well as the global community. The College is committed to student-centric academic programs and services, workforce development, continuing education, diverse partnerships, electronically delivered instruction, and sustainable practices that prepare students for personal success and responsible citizenship."

The College's out-of-state and out-of-county enrollment is set forth in the chart below:

## OUT OF STATE STUDENTS

	Fall 2008	Spring 2009	Summer 2009
Count of Students			
Full-time	42	45	18
Part-time	<u>43</u>	<u>25</u>	<u>26</u>
Total	85	70	44
Average Number of Credits			
Full-time	14.1	14.9	9.3
Part-time	<u>7.7</u>	<u>6.1</u>	<u>3.8</u>
Total	10.9	11.8	6.0
	Fall 2009	Spring 2010	Summer 2010
Count of Students			
Full-time	77	65	30
Part-time	<u>35</u>	<u>43</u>	<u>18</u>
Total	112	108	48
Average Number of Credits			
Full-time	15.4	15.2	10.2
Part-time	<u>6.8</u>	<u>6.2</u>	<u>3.1</u>
Total	12.7	11.7	7.5

## OUT OF COUNTY STUDENTS

	Fall 2008	Spring 2009	Summer 2009
Count of Students			
Full-time	36	40	30
Part-time	<u>78</u>	<u>78</u>	<u>30</u>
Total	114	118	60
Average Number of Credits			
Full-time	14.0	14.5	7.9
Part-time	<u>5.8</u>	<u>6.0</u>	<u>3.0</u>
Total	8.4	8.9	5.5
	Fall 2009	Spring 2010	Summer 2010
Count of Students			
Full-time	51	57	50
Part-time	<u>62</u>	<u>78</u>	<u>37</u>
Total	113	135	87
Average Number of Credits			
Full-time	14.7	14.8	8.8
Part-time	<u>6.4</u>	<u>7.1</u>	<u>3.2</u>
Total	10.1	10.4	6.4

The College maintains that it will require all out-of-state and out-of-county students to live in the Facility. The College's housing office will only assist students with other off-campus accommodations if the on-campus Facility is at full occupancy.

The College is governed by a five member Board of Trustees. The current Trustees are:

*Spencer Slate, Chair.* Mr. Slate has been the owner of Captain Slate's Atlantis Dive Center in Key Largo since 1978 and currently serves on the Board of Directors of the National Association of Underwater Instructors. He is one of the founding members of the Keys Association of Dive Operations as well as a founding member of the Florida Association of Dive Operators and currently serves as their president. He has served on the Key Largo Chamber of Commerce Board of Directors for 24 years, serving as president for three of those terms. Mr. Slate is a graduate of East Carolina University.

*Kim Bassett, Vice Chair.* Ms. Bassett has been the CEO of Fishermen's Hospital in Marathon, Florida since 2005. She holds a Master's degree in Business, with a Specialization in Health Administration from the University of Miami and a Bachelor's degree in Nursing from Drury University in Springfield and is licensed Florida Healthcare Risk Manager. Prior to her appointment as CEO she worked with the Lower Keys Medical Center for 16 years, with 11 years as the Chief Nursing Officer. Ms. Bassett is very active in the community, serving on the Area Health Education Center, Marathon Chamber of Commerce and the United Way. She has served as a mentor for high school students and worked with the College Explorers Program. She is a member of the American College of Healthcare Executives, American Nurses Association and the Florida Nurses Association.

*Edwin Scales, Trustee.* Mr. Scales serves as General Counsel to the Florida Citrus Commission and is "of counsel" with Florida's Gray Robinson Firm. He is a former City of Key West Commissioner and former City of Key West Planning Board Member. Mr. Scales has a Bachelor of Science in Telecommunications with Honors from the University of Florida and a Juris Doctorate from the University of Florida College of Law. He currently represents the 16<sup>th</sup> Judicial Circuit (i.e. Monroe County) with the Florida Bar, Board of Governors.

*Dr. Antoinette Martin, Trustee.* Dr. Martin is a licensed psychologist, operating a private practice in Key West, where she provides outpatient therapy for adults, children, couples, and families. She was recently employed by Monroe County School District, treating local middle and high school students and their families. She holds a Doctorate of Philosophy and a Masters of Arts in Psychology from Notre Dame and a Bachelor of Arts in Psychology from the University of Florida. A former board member for the Domestic Abuse Shelter and current member of the Key West Chamber of Commerce, she actively volunteers her time serving the community through programs for disadvantaged youth, AYSO soccer, and church related activities. She also helped establish the "Why Try" program at Horace O'Bryant Middle School and Key West High School, which is designed to keep at-risk kids in school.

*Ann O'Bannon, Trustee.* Ms. O'Bannon is the producer and host of The Morning Mix radio show on WGMX FM, where she interviews guests of local, state, and national importance relative to issues affecting the Key West community. Before moving to Key Colony Beach in 1990, Ms. O'Bannon had a career in technical sales support and corporate IT training. She has also spent several years teaching computer applications classes to employees of numerous organizations and private businesses in Monroe County. She founded "The Captain Bill O'Bannon Memorial Scholarship" to benefit marine business students at the College. Currently, she is the Chairman of the Monroe County Republican Executive Committee, a Greater Marathon Chamber of Commerce Ambassador, a Marathon Yacht Club Rear Commodore and serves on several boards, including the College's Island Living Campus Housing Foundation, the Rotary Club of Marathon, and the City of Key Colony Beach Code Enforcement Board.

Following are the officers of the College:

*Dr. Larry Tyree, Executive Secretary, President.* Dr. Tyree is now serving in his ninth presidency at the College. He previously held the rank of full professor at the University of Florida, where he was also the director of the Institute of Higher Education and the executive director of the National Alliance of Community and Technical Colleges. Dr. Tyree served as a community college CEO for 26 years at Gulf Coast Community College in Panama City, Florida, the Dallas County Community College District in Texas, and Santa Fe College in Gainesville, Florida. He also served as interim president of five other institutions, including Johnson County Community College in Overland Park, Kansas, and Monroe Community College in Rochester, New York.

*Debra Leonard, Recording Secretary, Executive Director, President's Office.* Ms. Leonard graduated from the College with an Associate in Arts degree. She has been an employee of the College for 20 years and has worked in the President's Office for 10 years. For the past five years, she has served as president of the Colleges chapter of the Florida Association of Community Colleges. Ms. Leonard has been the recording secretary for 9 years and also serves as recording secretary for the College's direct support organization, the Florida Keys Educational Foundation.

### **THE PROJECT/THE FACILITY**

The project consists of the acquisition of a leasehold interest in approximately one-half ( $\pm .53$ ) acre of land on the College campus and the construction of a one hundred (100) bed dormitory facility for the benefit of the College. The Facility will consist of a 30,000 sq. ft., three story reinforced concrete building, of which two floors would be for apartment style housing. Two-thirds of the rooms will have an ocean view. All students will have private bedrooms in four-bedroom, two bathroom units on two floors. Each bedroom will have one bed. The units will be fully furnished and have small cooking areas containing a microwave, 13 cu. ft. refrigerator, 4-burner cooktop and dishwasher. All rooms will have individual temperature control and cable TV connections. There will be study rooms and vending on each floor with a larger meeting/seminar room on the first floor. Other available amenities include WiFi, central laundry services and an exercise room. For safety, the Facility will be equipped with key-less main exterior entry, alarmed fire exits, automatic fire sprinkler system and security cameras. The surrounding grounds will be landscaped and include an outdoor bar-b-que /gathering area with picnic tables. Under the building there will be secured parking for 40 vehicles and 60 bikes or motorbikes.

Rents are projected to be \$800.00 per month for full year rentals. The market calls for a premium on monthly rents for academic year leases. The College will withhold transcripts and suspend registration for non-payment of rents. All out-of-state and out-of-county students will be required to live at the Facility, on a first come, first serve basis. The College's out-of-state and out-of-county enrollment is set forth above in "THE COLLEGE" section of this Official Statement.

The College does not pay property taxes.

### **The Lease**

The College and the Issuer have entered into a lease dated September 27, 2010 (the "Lease"). The initial term of the Lease is fifty (50) years commencing November 1, 2010 and expiring September 30, 2060. At any time during the term of the Lease should the law allow the College to own student housing on property owned by the College, then at the College's option, the Lease will be cancelled and the College will take over ownership and operation of the Facility, subject to the obligations of the Issuer that may exist at that time.

The total rent for the initial term of the Lease is fifty Dollars (\$50.00) payable in annual installments of One Dollar (\$1.00) due on November 1 of each year. As additional rent, the Issuer will pay all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises or imposts. Issuer will also pay all special assessments, levies or charges made by any municipal or political subdivision for local improvements, if required by law.

Under the Lease, the Issuer is responsible for the plans and specifications for the Facility and the construction of the Facility. Throughout the term of the Lease, the Issuer will also be responsible for the maintenance of the Facility and the insurance thereon.

### **Phase I Environmental Assessment**

A Phase I Environmental Site Assessment dated May 25, 2010 (the “ESA”) was prepared by SWC, Miami, Fort Meyers and Key West, Florida. The ESA noted one Recognized Environmental Condition (“REC”) which was the form of storage, use and disposal of oil in the College’s marine technology department. It also noted that the REC was being managed compliant with legal requirements and there were no signs or records of any contamination. See Appendix E – Findings, Opinion and Conclusions of the Phase I Environmental Site Assessment.

### **THE MANAGER**

The College shall act as Manager of the Project or another managing entity as may be selected from time to time by the Issuer, so long as such other person or entity shall enter into a Management Agreement that satisfies the safe harbor provisions of Revenue Procedure 97-13.

### **Management Agreement**

The Issuer and the Manager have entered into a Management Agreement dated November 1, 2010 (the “Management Agreement”). A copy of the Management Agreement is on file with the Underwriter.

The term of the Management Agreement commences on the date when occupancy begins and terminates on November 1, 2060. The Manager may terminate the Management Agreement at any time upon sixty (60) days’ written notice to the Issuer. The Issuer may terminate the Management Agreement should the Manager breach the Management Agreement.

During the term of the Management Agreement the Issuer shall pay the Manager an annual fee equal to One Hundred Dollars (\$100.00) (the “Management Fee”) plus any net amount exceeding all costs and expenses incurred in the operation of the Facility and required payments on the Bonds made by the Issuer to finance the Facility. The management services for the Facility will include, but not be limited to staffing, accounting, billing, collections, setting of lease rates and charges and general administration. The Management Fee, maintenance fees and security fees will be subordinated to Bond payments.

### **THE CONTRACTOR**

The contractor for the Project will be SIKON Construction Company, LLC, Deerfield Beach, Florida (the “Contractor”). The Contractor was formed on February 9, 2009. The Contractor has two members: DKCSK Construction Corporation and SIKON Construction Corporation II, which also serves as manager of the Contractor. The members of the Contractor constructed 821,340 square feet of commercial space in Florida during 2009 and reported revenues totaling \$73.1 million. Its scope of services ranges from pre-construction through construction to post-construction. The Contractor is a



member of the U.S. Green Building Council (“USGBC”) and has extensive experience with the Leadership in Energy and Environmental Design (“LEED”) certification process and green building materials and methods.

Listed below are examples of the projects recently completed by the Contractor:

Category	Project	Location
<b>Hotel</b>	Sleep Inn Hotel	Lake Mary, FL
	Comfort Inn	Miami Springs, FL
	Sleep Inn	Miami Springs, FL
	Candlewood Hotel	Miami, FL
	St. George Residences & Condo Hotel	Coral Gables, FL
<b>Retail/Grocer</b>	The Fresh Market at South Beach	South Beach, FL
	Publix at Riviera Beach	Riviera Beach, FL
	The Shops at the Fountains	Plantation, FL
	Publix at St. John’s Plaza	Titusville, FL
	Tapestry Park	Jacksonville, FL
	Blue Bell Creameries	Delray Beach, FL
	Skylake Mall	Miami Gardens, FL
	Greenwise at Legacy Place	Palm Beach Gardens, FL
	Publix at Windover Square	West Melbourne, FL
	Canyon at Town Center	Boynton Beach, FL
	Publix at Frenchman’s Crossing	Palm Beach Gardens, FL
	Publix at The Galleria	Fort Lauderdale, FL
	Lee Square	Lake Worth, FL
	Publix at the Seminole Shoppes	Neptune Beach, FL
	Publix at Casselberry Commons	Casselberry, FL
	Walgreens at Canyon Town Center	Boynton Beach, FL
	Colonnade at Sawgrass Mills	Sunrise, FL
	BJ’s Wholesale Club	Clermont, FL
	Tapestry Park Retail II	Jacksonville, FL
	Lee Vista Town Center	Orlando, FL
<b>Office</b>	Kohl’s	Hollywood, FL
	SIKON Professional Building	Deerfield Beach, FL
	Lake Emma Professional Building	Lake Mary, FL
	Professional Building at s. Kendall Sq.	Hollywood, FL

The key personnel of the Contractor for the Project are:

*Steven Gorackowski, Chief Executive Officer.* Mr. Gorackowski has over 30 years of expertise in negotiated and competitively bid building projects and mixed-use developments nationwide. As President of an ENR Top 400 General Contractor, he was instrumental in opening and managing general construction company branch offices throughout the US and Caribbean. Most recently he was instrumental in organizing and managing a design-build division in Hawaii, with multi-site contracts totaling over \$2.6 billion for an ENR Top 20 General Contractor. Mr. Gorackowski is also knowledgeable in design, finance and real estate. He has diversified company services to include design-build, master planned communities, multi-family, big-box and specialty retail, hospitality, industrial, medical, infrastructure developments, turn key services, and joint venture partnerships.

*Dale E. Scott, CDP, Sr. Executive Vice President.* Mr. Scott has over 40 years of experience in construction and real estate. His responsibilities for SIKON include directing the company's Pre-Construction Service Department and Business Development. Educated in Business Administration at Kansas University, Mr. Scott is active in many industry organizations including ICSC, ULI, NAIOP, AGC and ABC. He served as Chairman of ISCS/MRA's Joint Task Force on the International Building and Fire Codes. Mr. Scott is a past chairman of the CenterBuild Conference, and currently serves on the CenterBuild Advisory Council. He was former Chairman of ICSC's Florida Conference and Chairman of the planning committee for the 2007 West Florida Idea Exchange and is an active member of the ICSC Governing Committee. Mr. Scott is a recipient of ICSC's Trustees Distinguished Services Award and a 2004 inductee into the Retail Construction Hall of Fame. Mr. Scott has published numerous articles and speaks frequently at many industry conferences, including being a regular speaker at the annual Florida State University Real Estate Trends Conference. He also served on the NACORE Institute faculty and has been a contributor to the annual Florida Regional Overview Report.

*Brian T. French* will serve as project manager. Mr. French is a Florida State Certified General Contractor, OSHA and ISO 9000 certified. He has provided overall project leadership for the management and coordination of numerous commercial/medical and hospitality projects throughout South Florida from commencement through to certificate of occupancy.

*Jeff Lownes* will serve as project superintendent. Mr. Lownes has over 35 years of experience in all phases of the construction industry. He is OSHA certified and expert with Storm Water Pollution Prevention Plans.

### **Construction Contract**

Prior to closing the Contactor shall enter into a construction contract with the Developer to provide all materials and labor necessary to complete the Facility in a timely fashion. The Construction Contract is for a guaranteed maximum price not to exceed \$5,130,000.00, with a contingency of \$200,000 available for use as needed during the construction process.

### **THE ARCHITECT**

The architect for the Project is Hayes|Cumming Architects, P.A., St. Petersburg, Florida (the "Architect"). The Architect was incorporated in the State of Florida on August 29, 2006. Prior to forming Hayes|Cumming Architects, P.A., Andrew Hayes and Paul Cumming were stockholders in ruyle. hayes + jennwein architects, pa. They have maintained a professional collaboration since February 1998.

Recent project experience of the Architect includes:

Project Name	Use	Sq. Ft.	Cost (\$)
Abdallah Residence	Extended family residence	7,804	not avail.
COSP Fire Station 9	Fire Station	9,344	950,000
DHS Key West	New Government Office Bldg.	13,111	3,922,514
FKCC Campus Envelope Repair and Repaint	Educational	N/A	350,000
FKCC Marine Technology Bldg.	Classroom & Lab building	31,270	4,600,000
FKCC Student Centre Restroom (Renovation)	Educational Support Building	528	75,000
Holy Family School (Renovation)	Elementary/Middle School	32,000	1,105,000
Holy Family Church (Renovation)	Worship Space	14,000	1,350,000
Lakewood Commercial Centre	Retail & Office Space	22,440	2,175,000



The Meridian	Retail & Residential	10,989	1,150,000
Mid City Townhouses	Residential	8,480	986,000
Mitsunaga/Tongpalan Residence	Extended family residence	1,678	385,000
St Anthony's Convent	Worship/Residence	6,4870	1,515,000
St. Clement Mission School (Renovation)	Multi-purpose Space	8,220	285,000
St Francis of Assisi: Social Hall (Addition)	Multi-purpose Space	6,330	965,000
St. Justin Martyr (Renovation)	Worship Space	5,494	226,000
St. Matthew Business Office	Office/worship	8,690	1,272,000
Tampa Catholic High School Science & Technology Building	Library & Technology Building	16,748	1,730,000

The principal architect for the project is:

*Andrew M. Hayes, AIA, LEED AP.* Mr. Hayes is currently managing principal for the Architect. He is responsible for the practice management and business development of the firm. He received his Bachelor of Architecture from the University of Hawaii and is licensed in Florida, North Carolina, Louisiana and Texas. He has taught design studio and professional practice; holding positions at Honolulu Community College, International Academy of Design & Technology and the University of South Florida. He has published a book entitled Construction Administration for Young Architects, a comprehensive training program for interns and project case studies. Currently Mr. Hayes is President of the American Institute of Architects-Tampa Bay Chapter and a Director of AIA Florida.

### **Architect's Contract**

The Architect entered into an Architect's Contract with the Developer on May 3, 2010 to provide basic design, architectural and engineering services required to complete the Facility for a fixed price not to exceed \$458,000.00. In addition to basic architectural services the Architect shall provide fast-track design services, civil engineering services and landscape design billed on an hourly basis.

### **THE DEVELOPER**

Student Suites South Florida, LLC, Independence, Missouri, will serve as developer for the Project (the "Developer"). The Developer is an affiliate of Student Suites, a C-Corporation formed in 1996 ("Student Suites"). Following are student housing projects developed by Student Suites and its affiliates:

Project Name	School	Location	Cost	Opened
Student housing	Barton County Community College	Great Bend, KS	\$2,800,000	Fall 1999
Women's Dorm	Barclay College	Haviland, KS	\$1,900,000	Fall 2000
Bideau Residence Hall	Neosho County Community College	Chanute, KS	\$4,900,000	Fall 2000
Auggie Suites/ Auggie Terrace	North Carolina A&T State University	Greensboro, NC	\$28,000,000	Fall 2001
Foundation Hall I	Central State University I	Wilberforce, OH	\$7,400,000	Fall 2002
Delta Housing Complex	University of Arkansas at Pine Bluff	Pine Bluff, AR	\$8,220,000	Fall 2003
Foundation Hall II	Central State University II	Wilberforce, OH	\$12,200,000	Fall 2004
Campus Suites	Gogebic Community College	Ironwood, MI	\$2,900,000	Fall 2006

Jeanne Collins		Kansas City, MO	\$3,400,000	Fall 2007
Thompson Hall	Avila University			
Living Learning Center	Baker University	Baldwin City, KS	\$6,291,500	Fall 2008
Living & Learning Center	Wilberforce University	Wilberforce, OH	\$6,585,000	Fall 2008
Living Center Northeast	Colby Community College	Colby, KS	\$5,200,000	Fall 2008
Berkel Hall	University of Saint Mary	Leavenworth, KS	\$4,674,042	Fall 2009

North Carolina A&T State University, Central State University I&II, University of Arkansas at Pine Bluff, Baker University, Wilberforce University, Avila University, University of Saint Mary, Virginia Sate University, Colby Community College, , Barclay College, Gogebic Community College, Neosho County Community College.

The Co-Founder of the Developer, and the person responsible for this project, is:

*Dick Davis, Director Development, Acquisitions & Finance.* Mr. Davis received his BS Degree in Business from Missouri State University and his MBA from University of Central Missouri. He specializes in the real estate and infrastructure development marketplace. He has over 25 years of experience in public finance and has performed financial advisory services for over 1,000 clients in tax-exempt and taxable financings.

### **Development Agreement**

The Developer will enter into a Development Agreement with the Issuer on November 12, 2010, for the design and construction of a new residence hall, for a fee of \$470,000.00 (the “Developer’s Fee”). Half of the Developer’s Fee was paid upon execution of the Development Agreement and half will be paid upon completion of the Facility. The Developer has contracted with the Architect and the Contractor. The Developer will, unless delayed by an event constituting Force Majeure, complete construction to the point of securing a final occupancy permit for the entire Facility and the installation of all furniture and fixtures, on or before August 10, 2011, and will complete punch list items and final cleanup and site demobilization on or before September 1, 2011. If the Developer is unable to complete the Facility by August 10, 2011 for any reason, the Developer shall use the Developer’s Reserve Fund to reimburse the Capitalized Interest Account. The Developer will not permit any mechanic’s lien nor lien on public funds to be filed against the Facility. Should any such lien be filed, the Developer will immediately cause it to be removed from all public records by securing a bond for such purpose.

### **Payment and Performance Bond**

A Payment and Performance Bond is to be provided by the Developer which bond will guarantee completion of Developer’s obligations under the Development Agreement and payment in full of all contractors, material suppliers and others who contribute to the design or construction of the Facility.

### **FINANCIAL ADVISOR**

Kraig Consulting, LLC, Arvada, Colorado is acting as financial advisor for the Project (the “Financial Advisor”). The Financial Advisor is a financial consulting firm specializing in the education and not-for-profit sectors. Representative services include:

- Capital markets education
- Public-private partnership evaluations
- Debt capacity analysis
- Rating agency presentations and formulation of credit rating strategy
- Project finance structuring and evaluation of alternatives
- Working with bond insurers and letter of credit providers
- Collaborating with underwriters and derivatives providers
- New project evaluations, with special attention to current market conditions, including financial modeling
- Capital planning
- New bond issue and refinancing support
- Request for proposal (RFP) development for developers and underwriters
- Counsel clients throughout RFP process including evaluating venter responses and conducting interviews
- Evaluation of refunding and restructuring opportunities
- Pro forma financial projections based on industry benchmarking
- Project feasibility studies
- Board education and development

Following is a sampling of clients served by the Financial Advisor:

Champlain College, The Auraria Foundation (University of Colorado at Denver, Metro State University & Community College of Denver), Northwood University (Michigan and Texas campuses), The McKinley Foundation at the University of Illinois, and the Table Mountain Animal Center Foundation in Golden, Colorado.

The principal of the Financial Advisor is:

*Kirstin Kraig.* Ms. Kraig founded the firm in 2008 after more than 10 years as Senior Vice President in the Education and Non-Profit Finance Group of the investment banking firm, George K. Baum and Company.

## **CONSULTANT**

The College has engaged MGT of America, Inc. (the “Consultant”) to assist the College in preparing its policies and procedures for the new student housing program on campus. The Consultant is a national research and consulting firm founded and incorporated in 1974 in Tallahassee, Florida. It now includes offices in Austin, Texas; Sacramento, California; Olympia, Washington; and Washington D.C. It has managed over 3,800 client engagements and has a staff of over 100 professionals. It has , worked with over 350 higher education clients including state universities, community colleges, private colleges and universities, state higher education boards, governors’ offices, legislatures, special study commissions and nonprofit organizations. Market Analysis team member, James F. Day, has been assigned by the Consultant to work with the College.

*James F. Day.* Mr. Day has 34 years experience managing and leading college housing programs. Prior to becoming a consultant, he served as Director of University Housing at the University of Georgia for 15 years. Previous to that position, he served as Assistant Director of Residence and Director of Richardson Residence Halls at Iowa State University, Director of Housing at University of Wisconsin-Oshkosh, Director of Campus Residential Facilities at Ball State University, and Residence

Hall Director and Area Coordinator at the University of Miami. He earned his Ph.D. in Professional Studies in Education/Higher Education Administration from Iowa State University.

## **TRUSTEE**

Zions First National Bank, Denver, Colorado, shall serve as Trustee (the “Trustee”). The Trustee did not participate in the preparation of this Official Statement and makes no representations concerning the Bonds, the collateral or any other matter stated in this Official Statement. The Trustee has no duty or obligation to pay the Bonds from its own funds, assets or corporate capital or to make inquiry regarding, or investigate the use of, amounts disbursed from the accounts held under the Indenture.

## **DESCRIPTION OF BONDS**

### **General**

The Bonds are issuable as book entry only bonds registered in the name of Cede & Co. in denominations of \$5,000. The Bonds will bear interest at the rates and will mature on the dates and in the amounts stated on the cover page hereof. Interest will be payable semi-annually on the first (1st) day of each November and May (each an “Interest Payment Date”), beginning on May 1, 2011 until the final maturity of the Bonds. Interest payments (other than the final payment of interest due at the maturity or redemption of the Bonds) will be mailed by Zions First National Bank, as Paying Agent (the “Paying Agent”) on the payment date to each registered Holder of the Bonds as it appears on the registration books of the Trustee on the fifteenth (15<sup>th</sup>) day of the month next preceding any Interest Payment Date (the “Record Date”), at the address listed for such holders on the books of Bank of Oklahoma, as Registrar (the “Registrar”). The final payment of principal or Redemption Premium, if any, will be payable at the principal office of the Trustee or such other place as the Trustee and the registered Holder of the Bond may agree, upon surrender of the Bond for cancellation. The Trustee is the Registrar and Paying Agent for the Bonds.

Principal of and redemption premium, if any, on the Bonds at maturity or redemption shall be payable to the owners of such Bonds upon presentation and surrender of the Bonds when due, at the principal office of the Trustee. If the Bonds are in a book-entry form, the principal and redemption premium, if any, on the Bonds shall be payable by the Trustee to the order of the registered owner set forth in the register maintained by the Trustee.

If there is a default in the payment of principal or interest on an Interest Payment Date, defaulted interest shall be paid to the order of the Registered Owners in whose name Bonds of such Series are registered at the close of business on a Special Record Date.

THE BONDS SHALL NOT BE A DEBT OF FLORIDA KEYS COMMUNITY COLLEGE, NOR OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER FLORIDA KEYS COMMUNITY COLLEGE, NOR THE STATE OF FLORIDA NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL THE BONDS BE PAYABLE OUT OF ANY FUNDS OTHER THAN THOSE OF THE ISSUER RELATING TO THE PROJECT, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN THE INDENTURE. THE BONDS SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT OR BOND LIMITATION OR RESTRICTION. THE COLLEGE AND ISSUER HAVE NO TAXING POWER.

## Optional Redemption

The Bonds are subject to redemption at the Issuer's option, in whole on any date on or after November 1, 2020, or in part, (and by lot within a single maturity), in such order of maturities as the Issuer may elect on any Interest Payment Date on or after November 1, 2020 at the redemption prices set forth below (expressed as a percentage of the principal amount of the Bonds being redeemed) plus interest accrued thereon to the date set for redemption.

<u>Redemption Period</u>	<u>Redemption Price</u>
Both Dates Inclusive	
November 1, 2020 – October 31, 2021	102%
November 1, 2021 – October 31, 2022	101%
November 1, 2022 – and thereafter	100%

The Bonds shall be subject to special optional redemption in whole or in part at the price of the principal amount thereof, plus accrued interest thereon to the date of redemption, and without premium, on any date in the event that credit enhancement or a rating shall be obtained for all or part of the Bonds.

Any such redemption, either in whole or in part, shall be made in the manner and upon the terms and conditions provided in the Indenture.

Anything herein to the contrary notwithstanding, in no event shall the interest rate borne by any Bonds exceed the maximum interest rate allowable by applicable law (the "Maximum Interest Rate").

## Sinking Fund Redemption of Bonds

The Bonds are subject to mandatory (sinking fund) redemption prior to maturity, in part by lot in \$5,000 principal amounts, in such manner as the Trustee may determine, at redemption prices equal to 100% of the principal amount thereof plus interest accrued to the redemption date, on each November 1 in the years and in the following amounts set forth below:

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
2013	90,000	2028	245,000
2014	95,000	2029	260,000
2015	100,000	2030	280,000
2016	110,000	2031	295,000
2017	115,000	2032	320,000
2018	125,000	2033	340,000
2019	130,000	2034	365,000
2020	140,000	2035	390,000
2021	150,000	2036	415,000
2022	160,000	2037	445,000
2023	175,000	2038	475,000
2024	185,000	2039	510,000
2025	200,000	2040	545,000
2026	210,000	2041	585,000
2027	225,000	2042	625,000

The aggregate amount of principal and interest payments due on the Bonds under the Indenture which is to be deposited into the Bond Fund on or before each Interest Payment Date next preceding each

mandatory sinking fund redemption date shall include amounts sufficient to redeem, on the respective mandatory sinking fund redemption date, the principal amount of Bonds set forth in the tables above (less the amount of any credit described below).

The Issuer shall have the option to deliver for cancellation to the Registrar any Bonds which mature on the Maturity Dates, in any aggregate principal amount, and to receive a credit therefor against the mandatory sinking fund requirement (and corresponding mandatory redemption obligation) of the Issuer set forth opposite the year of the next succeeding mandatory redemption date for the Bonds maturing on the Term Maturity Date shown above.

That option shall be exercised by the Issuer on or before the forty-fifth (45<sup>th</sup>) day preceding the applicable mandatory sinking fund redemption date, by furnishing to the Trustee a certificate, executed by the Authorized Issuer Representative, setting forth the extent of the credit to be applied with respect to the mandatory sinking fund requirement for the Bonds. If the certificate is not furnished timely to the Trustee, no credit shall be made against the mandatory sinking fund requirement for the Bonds (and corresponding mandatory redemption obligation), although credits may be available against subsequent mandatory sinking fund requirements for the Bonds.

To the extent not applied theretofore as a credit against any mandatory sinking fund requirement for the Bonds, a credit against the mandatory sinking fund requirement for the Bonds (and the corresponding mandatory redemption obligation) described in the preceding paragraph shall be received also by the Issuer for Bonds which mature on the Maturity Dates and which prior thereto have been redeemed other than through the operation of the mandatory sinking fund requirements or have been purchased for cancellation and canceled by the Trustee.

Each Bond so delivered, redeemed previously, or purchased and canceled, shall be credited by the Trustee at 100% of the principal amount thereof against the mandatory sinking fund requirement for the Bonds described above, subject to the completion of the procedures described above. Any excess of that amount over the then current mandatory sinking fund requirement of the Bonds shall be credited against subsequent mandatory sinking fund requirements for the Bonds in the order directed by the Issuer by following the procedures described above.

### **Special Mandatory Redemption**

(a) The Bonds shall be subject to special mandatory redemption at the principal amount thereof, plus accrued interest thereon to the date of redemption, and without premium, in whole on any date or in part on any Interest Payment Date upon the transfer of moneys to the Principal Account from the Net Awards Account pursuant to the Indenture.

(b) **Determination of Taxability.** The Bonds are also subject to special mandatory redemption prior to maturity in whole at any time on the earliest practicable date selected by the Trustee, and in no event later than 90 days, following the occurrence of a Determination of Taxability. The redemption price of the Bonds to be redeemed in such event shall be 105% of the principal amount thereof plus interest accrued to the redemption date.

(c) **Mandatory Redemption on Default.** The Bonds are also subject to mandatory redemption at the price of par plus interest accrued to the date of redemption if the Bonds shall be accelerated following the occurrence of an Event of Default as described in the Indenture.



## **Selection of Bonds for Redemption**

If less than all of the Bonds outstanding shall be called for redemption, the Bonds shall be redeemed by lot in the principal amount required by the Indenture. If a Bond is of a denomination larger than \$5,000, a portion of such Bond may be redeemed, but Bonds shall be redeemed only in the principal amounts of \$5,000 each or any integral multiple thereof. In the event of a partial redemption of any Term Bond, Amortization Installments for such Term Bond shall be reduced pro rata in such manner as the Trustee may determine to reflect such redemption.

## **Notice of Redemption**

Notice of the intended redemption of Bonds shall be given by mail to the registered Owner of each Bond to be redeemed at the address of such Owner shown on the Registrar's bond register. Notice by publication shall not be required. All such notices shall be given not less than 30 days nor more than 60 days prior to the date fixed for redemption. Each notice with respect to such Bonds shall specify the Bonds to be redeemed, the numbers of the Bonds being called, if less than all of the Bonds, are being called, the redemption price, the redemption date and the place or places where amounts due upon such redemption will be payable. Such notice shall further state that payment of the applicable redemption price plus accrued interest to the date fixed for redemption will be made upon presentation and surrender of Bonds. Failure to give notice by mailing to the Registered Owners of any such Bonds designated for redemption, or any defect in such notice, shall not affect the validity of the proceedings to redeem such Bonds.

When notice of redemption has been given in the manner provided above, and money sufficient for the redemption is held by the Trustee or Paying Agent for that purpose, the Bonds called for redemption shall become due and payable on the redemption date, and interest thereon shall cease to accrue. Thereafter the Owners of such Bonds shall no longer be entitled to any security or benefit under the Indenture except to receive payment of the redemption price thereof, to replace a lost Bond and to transfer Bonds. The Trustee shall not give notice of the redemption of any Bonds unless there shall be on deposit with the Trustee or Paying Agent funds sufficient to pay for such redemption. However, such requirement shall not apply in the case of redemptions pursuant to scheduled Amortization Installments or in the case of a refunding.

## **Additional Bonds**

The Issuer may issue Additional Bonds to provide additional funds to renovate, rehabilitate or improve the Project, to acquire additional developments and complete improvements thereto, together with related, subordinate facilities or to refund all or part of the Bonds, or any combination of the foregoing, provided that: (a) no such obligations shall be pari passu with the lien of the Mortgage and the pledge of the Revenues under the Indenture in favor of the Bonds, unless at the time of issuance of the Bonds the Issuer shall deliver a certificate of an independent certified public accountant that the Revenues received by the Issuer during any twelve consecutive months (the "Test Period") of the eighteen (18) months immediately preceding the date of issuance of said Additional Bonds were at least equal in dollar amount to: (i) 125% of the average debt service requirement coming due in any Bond Year with respect to the Outstanding Bonds and the Additional Bonds proposed to be issued after setting aside an amount necessary to pay those costs described in clauses (i) and (ii) of Section 5.06(b) of the Trust Indenture for such period (being any required deposit to the Rebate Fund, 50% of the Management Fee due in such period, and the deposits to the Operating and Maintenance Fund required by the Budget of the Issuer for such period, exclusive of the amounts required to be paid to the Repair and Replacement Reserve Account) and (ii) will equal at least 105% of the maximum debt service requirement coming due in any Bond Year with respect to the Bonds, after setting aside an amount necessary to pay those costs described

in clauses (i) through (vii) of Section 5.06(b) of the Trust Indenture for such period (being any required deposit to the Rebate Fund for such period, all of the expenses of operating and maintaining the Project for such period, and debt service on the Bonds for such period, including any required deposits to the Reserve Account) and (b) no such obligations shall be *pari passu* with respect to the lien of the Mortgage and the pledge of the Revenues hereunder in favor of the Subordinated Bonds unless at the time of issuance of the Bonds the Issuer shall deliver to the Trustee a certificate of an independent certified public accountant stating that the revenues received by the Issuer during any twelve consecutive months (the “Test Period”) of the eighteen (18) months immediately preceding the date of issuance of said Additional Bonds were at least equal in dollar amount to: (i) one hundred twenty-five percent (125%) of the average debt service requirement coming due in any Bond Year with respect to the Outstanding Bonds after setting aside an amount necessary to pay those costs described in clauses (i) and (ii) of Section 5.06(b) of the Trust Indenture for such period (being any required deposit to the Rebate Fund, 50% of the Management Fee due in such period, and the deposits to the Operating and Maintenance Fund required by the Budget of the Issuer for such period, exclusive of the amounts required by the Budget of the Issuer for such period, exclusive of the amounts required to be paid to the Repair and Replacement Reserve Account) and (ii) will equal at least 105% of the maximum debt service requirement coming due in any Bond Year with respect to the Bonds and any Additional Subordinated Bonds proposed to be issued, after setting aside an amount necessary to pay those costs described in clauses (i) through (vii) of Section 5.06(b) of the Trust Indenture for such periods, (being any required deposit to the Rebate Fund for such period, all of the expenses of operating and maintaining the Project for such period, and debt service on the Bonds for such period, including any required deposits to the Reserve Account).

In the event that Additional Bonds are to be issued for the expansion of the Project, no such obligation shall be *pari passu* with respect to the lien of the Mortgage and the pledge of Revenues in favor of the Bonds unless specific approval of the issuance of such Additional Bonds for such expansion is obtained from both the Issuer and the College.

“Debt service” as used in the Indenture shall be deemed to include interest due during such period together with Amortization Installments scheduled for payment in such year and disregarding the principal amount due at maturity to the extent such principal shall be paid from Amortization Installments.

Notwithstanding the foregoing, the Issuer may, without producing the certificate of the independent certified public accountant described above issue Additional Bonds issued to refund and defease any outstanding bonds if the debt service in each Bond Year on such Additional Bonds is less than the debt service on the Bonds so refunded and such Additional Bonds do not mature later than such Bonds so refunded.

In addition, the Issuer may, without producing the certificate of the independent certified public accountant described above, issue Additional Bonds to provide additional funds to acquire additional developments and complete improvements thereto within eighteen months of the date of issuance of the Bonds provided that:

(i) the additional improvements are included in the Project and all revenues of the additional improvements are included as Revenues as provided in the Indenture and the requirements of the Indenture with respect to the perfection of the lien of the Indenture and the Mortgage are complied with;

(ii) a forecast statement of net cash flow before debt service relating to the Project including the new developments to be included (the “Additional Bonds Forecast”) is prepared by a qualified firm, and such Additional Bonds Forecast shall reflect that the projected coverage of net cash flow to debt service following the acquisition of the new developments shall be at least as good or better than the



projected coverage of net cash flow to debt service at the time the Bonds were issued, providing that the Additional Bonds Forecast shall be based, to the extent it includes debt service applicable to the Bonds, upon the actual interest rates and prices borne by such Bonds.

### **The DTC Book-Entry-Only System**

*The description which follows of the procedures and recordkeeping with respect to beneficial ownership interest in the Bonds, payment of principal and interest and other payments on the Bonds to Direct and Indirect Participants (each as defined below) or Beneficial Owners (defined below), confirmation and transfer of beneficial ownership interests in the Bonds and other related transactions by and between The Depository Trust Company (“DTC”), Direct Participants and Beneficial Owners, is based on certain information furnished by DTC. Accordingly, the Underwriter, the Issuer and/or the Borrower do not make any representations as to the completeness or accuracy of such information.*

DTC will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of CEDE & CO. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for each year of maturity of the Bonds, in the aggregate principal amount of each maturity, and will be deposited with DTC.

DTC, the world’s largest depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has Standard & Poor’s highest rating: AAA. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://www.dtc.org).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC’s records. The ownership interest of each actual purchaser of each Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on

behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, CEDE & CO., or such other name as may be requested by an authorized representative of DTC. The deposit of the Bonds with DTC and their registration in the name of CEDE & CO. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to DTC. If less than all of the Bonds within a maturity are being redeemed, DTC's practice is to determine by lot the amount of interest of each Direct Participant in such maturity to be redeemed.

Neither DTC nor CEDE & CO. (nor any other DTC nominee) will consent or vote with respect to the Bonds unless authorized by a Direct Participant in accordance with DTC's procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the Record Date. The Omnibus Proxy assigns CEDE & CO.'s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the Record Date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds and principal and interest payments on the Bonds will be made to CEDE & CO., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Issuer or Trustee or the paying agent, if any, on the payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name", and will be the responsibility of such Participant and not of DTC, the paying agent, if any, the Trustee, the Borrower or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds and principal and interest to CEDE & CO. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Trustee or the paying agent, if any, disbursement of such payments to Direct Participants shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Bonds at any time by giving reasonable notice to the Issuer or the paying agent, if any. Under such circumstances, in the event that a successor depository is not obtained, bond certificates are required to be printed and delivered.

The Issuer may decide to discontinue use of the system of book-entry only transfers through DTC (or a successor securities depository). In that event, bond certificates will be printed and delivered to DTC.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Issuer believes to be reliable, but the Underwriter, the Issuer and/or the Borrower take no responsibility for the accuracy thereof.

THE PAYING AGENT WILL NOT HAVE ANY RESPONSIBILITY OR OBLIGATION TO SUCH DTC PARTICIPANTS OR THE PERSONS FOR WHOM THEY ACT AS NOMINEES WITH RESPECT TO THE PAYMENTS TO OR PROVIDING OF NOTICE FOR THE DTC PARTICIPANTS, OR THE INDIRECT PARTICIPANTS, OR BENEFICIAL OWNERS.

SO LONG AS CEDE & CO. IS THE REGISTERED OWNER OF THE BONDS, AS NOMINEE OF DTC, REFERENCES HEREIN TO THE BONDHOLDERS OR REGISTERED OWNERS OF THE BONDS (OTHER THAN UNDER THE CAPTION "TAX EXEMPTION") SHALL MEAN CEDE & CO. AND SHALL NOT MEAN THE BENEFICIAL OWNERS OF THE BONDS.

*Discontinuance of Book-Entry-System.* If the Trustee, in its sole discretion, determines that DTC is not capable of discharging its duties, or if DTC discontinues providing its services with respect to the Bonds at any time, the Trustee will attempt to locate another qualified Securities Depository. If the Trustee fails to find such a Securities Depository, or if the Trustee determines, in its sole discretion, that it is in the best interest of the Trustee or that the interest of the Beneficial Owners might be adversely affected if the book-entry only system of transfer is continued (the Trustee undertakes no obligation to make an investigation to determine the occurrence of any events that would permit it to make such determination) the Trustee shall notify DTC of the termination of the book-entry only system.

*Transfer fees.* For every transfer and exchange of Series 2010A Bonds, owners of such Series 2010A Bonds requesting such transfer or exchange may be charged a sum sufficient to cover any tax, governmental charge or transfer fees that may be imposed in relation thereto, which charge may include transfer fees imposed by the Trustee, DTC or the DTC Participant in connection with such transfers or exchanges.

## **SECURITY FOR THE BONDS**

### **Limited Obligations**

THE BONDS ARE SECURED SOLELY BY A PLEDGE OF REVENUES AND BY A LEASEHOLD INTEREST ON THE PROJECT. THE BONDS ARE NOT A GENERAL OBLIGATION OF THE COLLEGE AND THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF IS NOT RESPONSIBLE TO MAKE ANY PAYMENTS WHATSOEVER ON THE BONDS. ACCORDINGLY, OWNERS OF THE BONDS SHOULD LOOK EXCLUSIVELY TO THE PROJECT FOR PAYMENT OF PRINCIPAL OF AND INTEREST ON THE BONDS.

### **Pledge Under the Indenture**

Under the Indenture, the Issuer has granted to the Trustee to secure the Bonds a lien upon and pledge of the Revenues of the Project.

The Indenture defines Revenues to include (i) all rentals, revenues, grants (including rent subsidies), and fees receivable in respect of the Project, including, without limitation, any receipts from concessionaires servicing the Project, any vending machines and laundry machines or similar receipts, with respect to the Project (but exclusive of security deposits for residential or concessionaire units in the Project to the extent such security deposits are not applied to the payment of rentals); (ii) Net Awards; (iii) interest earned on moneys deposited in any fund or account under the Indenture, except the Rebate

Fund; (iv) any monetary recovery obtained by the Trustee through the exercise of its rights under the Mortgage, subject to the application thereof as provided in the Mortgage; (v) moneys, if any, derived from the College pursuant to the provisions of the Interlocal Agreement by and between the College and the Issuer dated as of November 1, 2010 (the "Interlocal Agreement"); (vi) all other moneys deposited in the Revenue Fund from whatever source; and (vii) all proceeds of any thereof. Revenues shall not refer to the amounts on deposit in the Rebate Fund.

The Bonds are also secured by a pledge of the proceeds of the Bonds, subject to application in accordance with the Indenture.

**THE BONDS SHALL NOT BE A DEBT OF FLORIDA KEYS COMMUNITY COLLEGE, NOR OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER FLORIDA KEYS COMMUNITY COLLEGE, NOR THE STATE OF FLORIDA NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL THE BONDS BE PAYABLE OUT OF ANY FUNDS OTHER THAN THOSE OF THE ISSUER RELATING TO THE PROJECT, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN THE INDENTURE. THE BONDS SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT OR BOND LIMITATION OR RESTRICTION. THE COLLEGE AND ISSUER HAVE NO TAXING POWER.**

The Interlocal Agreement provides that if thirty (30) days prior to any interest payment date, principal payment date or redemption date with respect to payment of the Bonds, as the case may be, the amount on deposit in the Bond Fund is not sufficient to make all payments with respect to the principal of, redemption premium, if any, sinking fund installments for, and interest on the Bonds which are required to be made on such date, the Trustee shall promptly give telephonic notice (to be promptly confirmed in writing) stating the amount of such deficiency to the College, the Manager and the Issuer. Promptly upon receipt of such notice, the Issuer shall pay the amount of such deficiency (hereinafter the "Deficiency") to the Trustee in immediately available funds. In the event the Issuer fails promptly (within 24 hours of receipt of telephonic notice) to make such payment, the College will consider such payment from sources other than restricted revenues (hereinafter "Non-Restricted Revenues") as shall be sufficient to pay the Deficiency. The College may choose to appropriate funds from Non-Restricted Revenues sources to assist in replenishing that certain Debt Service Reserve Fund (hereinafter the "Debt Service Reserve Fund") described in that certain Trust Indenture (hereinafter the "Indenture") between the Issuer and the Trustee, dated as of November 1, 2010, as shall be sufficient to replenish the Debt Service Reserve Fund up to the level required under the terms of the Indenture. Upon receipt of such funds from the Issuer or College (or from the Manager), the Trustee shall deposit them into the appropriate account in the Bond Fund defined in the Indenture. Such obligations to consider budgeting and appropriating do not create any lien upon or pledge of such Non-Restricted Revenues; nor do they preclude the College from pledging in the future its Non-Restricted Revenues; nor do they require the College to levy and collect any particular Non-Restricted Revenues; nor do they give the holders of the Bonds a claim on the Non-Restricted Revenues as opposed to claims of general creditors of the College.

Anything in this Interlocal Agreement to the contrary notwithstanding, it is understood and agreed that all payments, if any, made by the College hereunder shall be payable from the portion of Non-Restricted Revenues considered for budgeting and appropriating as provided for hereunder, and nothing herein shall be deemed to pledge restricted revenues or Non-Restricted Revenues or to permit or constitute a lease or lien upon any assets of by the College; and no holders of the Bonds or any other person may compel the levy of restricted revenues or Non-Restricted Revenues on real or personal property within the boundaries of the College. Notwithstanding any provisions of this Interlocal Agreement or in the Bonds to the contrary, the College shall never be obligated to maintain or continue

any of the activities of the College which generate user service charges, regulatory fees or any Non-Restricted Revenues. Neither this Interlocal Agreement nor the obligations of the College hereunder shall be construed as a pledge of or a lien on all or any legally available Non-Restricted Revenues of the College. The obligations of the College herein to consider budgeting and appropriating are subject in all respects to the provisions of Florida law, including but not limited to the Act, and are subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the students of the College. See Appendix C: “Form of the Interlocal Agreement” attached hereto.

### **Developer Reserve Account**

The Developer Reserve Account established within the Permitted Cost Fund shall be initially funded in the amount of \$500,000 with Bond proceeds upon issuance of the Bonds. In the event that the Facility is constructed and made legally available for occupancy by students of the College by not later than midnight on August 15, 2011, the amount in the Developer Reserve Account shall be distributed as follows: (i) \$235,000 of the Developer Reserve Account shall forthwith be paid to the Developer; and (ii) \$265,000 shall forthwith be paid to the Contractor. In the event that the Facility is not legally available for such occupancy by midnight on August 15, 2011, the entire amount of \$500,000 shall be paid into the Bond Fund and used to pay interest on the Bonds as it becomes due. From the date of issuance of the Bonds until the amount held in the Developer Reserve Account is disbursed as set forth above, interest earned on the Developer Reserve Account shall be paid over periodically into the Bond Fund.

### **Leasehold Mortgage and Other Security Documents**

Under the Mortgage, the Issuer will grant to the Trustee a leasehold mortgage lien on and security interest in the Project. As further security for the Bonds, the Issuer will assign to the Trustee, among other things, all of its right, title and interest in and to all leases, subleases and tenancies and all rents and payments resulting from any use, possession or occupancy of the Project. See Appendix B: “Form of the Mortgage”.

## **SOURCES AND USES OF FUNDS**

The following table shows the estimated sources and uses of funds in connection with the Project:

### **SOURCES:**

Principal Amount of Bonds	\$8,305,000.00
Original Issue Discount	<u>(166,100.00)</u>
<b>TOTAL SOURCES</b>	<b>\$8,138,900.00</b>

### **USES:**

Deposit to Permitted Cost Fund (Construction Account)	\$5,365,500.00
Deposit to Permitted Cost Fund (Construction Account for FF&E)	200,000.00
Deposit to Permitted Cost Fund (Developer Reserve Account)	500,000.00
Deposit to Permitted Cost Fund (Cost of Issuance Account <sup>(1)</sup> )	260,482.00
Deposit to Investment Fund (Contingency Account)	200,000.00
Deposit to Bond Fund (Capitalized Interest Account)	506,693.00
Deposit to Debt Service Reserve Fund	671,350.00
Underwriter’s Discount	415,250.00
Rounding Amount	<u>19,625.00</u>
<b>TOTAL USES</b>	<b>\$8,138,900.00</b>

<sup>(1)</sup> Includes legal fees, Trustee’s fees, financial advisor’s fees, rating fee and printing costs.



## ANNUAL DEBT SERVICE REQUIREMENT

The following tables set forth the annual debt service requirements for the Bonds.

<b>Florida Keys College Campus Foundation, Inc.</b> <b>Senior Leasehold Industrial Development Revenue Bonds</b> <b>(Florida Keys Community College Project)</b> <b>Series 2010</b> <b>Debt Service Schedule</b>			
DATE	PRINCIPAL	INTEREST	TOTAL P & I
05/01/2011		272,911.53	272,911.53
11/01/2011		290,675.00	290,675.00
05/01/2012		290,675.00	290,675.00
11/01/2012		290,675.00	290,675.00
05/01/2013		290,675.00	290,675.00
11/01/2013	90,000.00	290,675.00	380,675.00
05/01/2014		287,525.00	287,525.00
11/01/2014	95,000.00	287,525.00	382,525.00
05/01/2015		284,200.00	284,200.00
11/01/2015	100,000.00	284,200.00	384,200.00
05/01/2016		280,700.00	280,700.00
11/01/2016	110,000.00	280,700.00	390,700.00
05/01/2017		276,850.00	276,850.00
11/01/2017	115,000.00	276,850.00	391,850.00
05/01/2018		272,825.00	272,825.00
11/01/2018	125,000.00	272,825.00	397,825.00
05/01/2019		268,450.00	268,450.00
11/01/2019	130,000.00	268,450.00	398,750.00
05/01/2020		263,900.00	263,900.00
11/01/2020	140,000.00	263,900.00	403,900.00
05/01/2021		259,000.00	259,000.00
11/01/2021	150,000.00	259,000.00	409,000.00
05/01/2022		253,750.00	253,750.00
11/01/2022	160,000.00	253,750.00	413,750.00
05/01/2023		248,150.00	248,150.00
11/01/2023	175,000.00	248,150.00	423,150.00
05/01/2024		242,025.00	242,025.00
11/01/2024	185,000.00	242,025.00	427,025.00
05/01/2025		235,550.00	235,550.00
11/01/2025	200,000.00	235,550.00	435,550.00
05/01/2026		228,550.00	228,550.00
11/01/2026	210,000.00	228,550.00	438,550.00
05/01/2027		221,200.00	221,200.00
11/01/2027	225,000.00	221,200.00	446,200.00
05/01/2028		213,325.00	213,325.00
11/01/2028	245,000.00	213,325.00	458,325.00
05/01/2029		204,750.00	204,750.00
11/01/2029	260,000.00	204,750.00	464,750.00
05/01/2030		195,650.00	195,650.00
11/01/2030	280,000.00	195,650.00	475,650.00
05/01/2031		185,850.00	185,850.00
11/01/2031	295,000.00	185,850.00	480,850.00
05/01/2032		175,525.00	175,525.00
11/01/2032	320,000.00	175,525.00	495,525.00
05/01/2033		164,325.00	164,325.00
11/01/2033	340,000.00	164,325.00	504,325.00
05/01/2034		152,425.00	152,425.00
11/01/2034	365,000.00	152,425.00	517,425.00
05/01/2035		139,650.00	139,650.00
11/01/2035	390,000.00	139,650.00	529,650.00
05/01/2036		126,000.00	126,000.00

11/01/2036	415,000.00	126,000.00	541,000.00
05/01/2037		111,475.00	111,475.00
11/01/2037	445,000.00	111,475.00	556,475.00
05/01/2038		95,900.00	95,900.00
11/01/2038	475,000.00	95,900.00	570,900.00
05/01/2039		79,275.00	79,275.00
11/01/2039	510,000.00	79,275.00	589,275.00
05/01/2040		61,425.00	61,425.00
11/01/2040	545,000.00	61,425.00	606,425.00
05/01/2041		42,350.00	42,350.00
11/01/2041	585,000.00	42,350.00	627,350.00
05/01/2042		21,875.00	21,875.00
11/01/2042	625,000.00	21,875.00	646,875.00
Total	8,305,000.00	12,911,236.53	21,216,236.53

### **BONDHOLDERS' RISKS**

In addition to factors set forth elsewhere in this Official Statement, purchasers of the Bonds should carefully consider the following risk factors in connection with investment in the Bonds.

#### **Limited Liability**

The Issuer has pledged no assets other than the Project and its Revenues to secure the Bonds, and has no taxing power. The Bonds shall not be a debt of Florida Keys Community College, nor of the State of Florida or any political subdivision thereof, and neither Florida Keys Community College, nor the State of Florida nor any political subdivision thereof shall be liable thereon, nor in any event shall the Bonds be payable out of any funds other than those of the issuer relating to the Project, and then only to the extent expressly provided in the Indenture. The Bonds shall not constitute an indebtedness within the meaning of any constitutional or statutory debt or bond limitation or restriction. The College and Issuer have no taxing power. The Bonds are payable solely from the Trust Estate, which is the sole asset of the Issuer pledged therefor.

#### **Limited Assets of the Issuer**

The Issuer's sole business consists of the ownership and operation of the Facility. Only the Project is pledged to secure the Bonds. If the Project experiences operating problems or financial difficulties, in addition to having no obligation to do so, it is highly unlikely that the Issuer would have the financial resources to inject additional funds into the operation of the Project. In addition, because the Issuer has limited sources of income, it may be unable to obtain new sources of funds or financing for the Project if such additional financing is necessary. Unless the Project generates revenue sufficient to make payments due under the Indenture, the Issuer will be unable to make timely payments of principal and interest due on the Bonds.

#### **Unique Nature of the Project**

The Project is best suited for use as a student dormitory. As a result, the remedies available to the Trustee in the event of a default under the Indenture or the Mortgage may be limited and the realization of revenues from the sale or leasing of the Project might thus be adversely affected.

There is no assurance that the College and/or the Issuer will successfully attract enough student residents to enable the Project to be successful and to meet the debt service obligations on the Bonds.

The Issuer has no contractual guarantee that any specified number of student residents will be housed in the Facility for any defined period.

The Issuer has no contractual guarantee that other entities will not make housing space available to the student residents which housing may be less expensive or more desirable.

### **Competition**

No assurance can be given that other competitive facilities or services will not be established, or that existing competitive facilities will not be expanded in the Project's service area in the future. The Issuer believes that the Project can effectively compete with other similar facilities currently located in its area of competition. However, there can be no guarantee that in the future the Project will be able to compete with student housing facilities designed and built with the benefit of advanced technology not available at the time the Project was constructed, or student housing facilities which are able to significantly reduce or contain their costs through economies of scale or other methods not available to the Issuer.

### **Construction Risks**

The failure to complete or a delay in the completion of the construction of the Project will adversely affect the receipt of Revenues and, thus, the payment of Debt Service on the Bonds. Some risks that will be present throughout the period of construction of the Project are outlined below.

There are a number of risks and contingencies associated with the completion of the Project. Contingencies generally involved in the construction of any facility, such as fire, labor difficulties and problems obtaining materials or routine governmental approvals may cause the actual cost of completion to exceed available funds. Furthermore, delay in completion of the Project for any reason beyond the anticipated completion date may result in a delay in receipt of Revenues projected for the Project.

In the event that the proceeds of the Bonds, together with other Project moneys, if any, are insufficient to complete the construction of the Project, there is no assurance the Issuer would have or be able to raise sufficient funds to complete the Project. If construction of the Project is not completed as contemplated by the Construction Contract, Revenues sufficient to pay Debt Service on the Bonds will not be generated.

There will be Payment and Performance Bonds from the Developer with respect to the Contractor's obligation to complete the Project under the Construction Contract. However, there can be no assurance that the construction of the Project can be accomplished under the allotted budget. Prospective investors may look only to the surety of payment under the Payment and Performance Bonds for performance of such obligations. See "THE CONTRACTOR" and "THE DEVELOPER" herein.

### **Operation of the Project**

The successful operation of the Project will depend, in substantial part, upon the management services provided by the Manager. See "THE MANAGER." The Issuer believes that the Manager is competent to manage the facilities for student housing, although the Manager has no experience managing such facilities, and there is no guarantee that the Manager will operate the Project in a manner which provides sufficient revenues to pay debt service payments and to operate and maintain the Project, in which case a new manager would have to be installed.

### **Investment in Leasehold Real Estate**

The Bonds will not be secured by any bond insurance, letter of credit, or other form of direct institutional credit enhancement. Except for amounts on deposit in certain funds and accounts created



under the Indenture, including the Reserve Account for the Bonds, the Project provides the only security for the timely payment by the Issuer of amounts due on the Bonds.

There are many diverse risks in any investment in real estate, which may have a substantial bearing on the profitability and financial feasibility of the Project, and which impact the realizable value of the leasehold interest in the real estate and other collateral securing payment of the Bonds. Such risks include possible adverse use of adjoining land, fire or other casualty, condemnation, increased taxes, changes in demand for such facilities, increases in utilities rates, adverse general and local economic conditions, energy shortages, a decline in property values in the Project's neighborhoods, increases in operating costs due to inflation, non-compliance of tenants with the terms of their leases, unfavorable governmental regulation (such as the enactment of rent controls), acts of God, and uninsurable risks (including nuclear war or accident), construction strikes, and decrease in the relative popularity of real estate investments, as contrasted with other investments. Further, if the Issuer defaults on the Bonds, the value of the Project, if marketable, may not be equal to the amount of outstanding principal and interest due on the Bonds.

### **Economic Risks**

The Bonds represent a long term investment in the Project. Not only will the Issuer and the Project be subject to the risks inherent in student housing discussed above, the Project's profitability and the Issuer's ability to make required payments under the Indenture will also be subject to risks inherent in the leasehold of property and the operation of any such facility. Such risks include fluctuations in occupancy rates and operating expenses, variations in occupancy charges, energy shortages, governmental restrictions and regulations, and general economic conditions, including conditions which may affect the successful operation of the Project. Furthermore, while such factors may operate to reduce the Project's income, operating costs, such as utilities, insurance costs and personnel costs could increase, inhibiting the profitability of the Project and the ability of the Issuer to pay the Bonds.

### **Liquidation of Security May Not Be Sufficient**

Because the Issuer will have no significant assets other than its interest in the Project the Issuer must look solely to the Project for the Bonds to pay and satisfy the Bonds in accordance with their terms. The Holders of the Bonds will be dependent, primarily, upon the successful operation of the Project and the value thereof for the payment of the principal, premium, if any, and interest on the Bonds. In the event the revenues from the Project are insufficient to pay the Bonds, then once any other assets of the Issuer have been exhausted, the Holders of the Bonds will have no person or entity to pursue for any deficiency which may exist.

### **Possible Claims of Third-Party Creditors**

On February 2, 1990, the United States District Court for the District of Columbia held in *Martens v. Hadley Memorial Hospital* that a judgment creditor of a borrower of the proceeds of tax-exempt revenue bonds could satisfy its judgment from moneys held by a trustee in a debt service reserve fund pledged to secure the revenue bonds. The Court held that absent a default under the loan documents pursuant to which the revenue bond proceeds were lent to the borrower and the acceleration of the obligations under the loan documents, the trustee bank holding the debt service reserve fund could not prevent attachment of amounts held in the reserve fund to satisfy the judgment. If the principles of this case were applied by the courts having jurisdiction over the Issuer, there is a risk that judgment creditors of the Issuer could attach the Debt Service Reserve Fund or other funds securing the Bonds.

## **Taxation of the Bonds**

An opinion of Bond Counsel has been obtained to the effect that interest earned on the principal of the Bonds is excludable from gross income for federal income tax purposes under current provisions of the Internal Revenue Code of 1986 (the “Code”), and applicable rules and regulations of the Internal Revenue Service (the “IRS”); however, such an opinion is not binding on the IRS. Application for a ruling from the IRS regarding the tax-exempt status of the Bonds has not been, and will not be, made. Such opinion is qualified in regard to certain limitations contained in the Code, under which certain post-closing events can destroy the tax-exempt status of the Bonds. See “TAX MATTERS” herein. In addition, there can be no guarantee that present advantageous provisions of the Code or the rules and regulations thereunder will not be adversely amended or modified, thereby rendering the interest earned on the Bonds taxable for Federal income tax purposes.

In December, 1999, as part of a larger reorganization of the IRS, the IRS commenced operation of its Tax-Exempt and Government Entities Division (the “TE/GE Division”), as the successor to its Employee Plans and Exempt Organizations division. The TE/GE Division has a subdivision that is specifically devoted to tax-exempt bond compliance. The number of tax-exempt bond examinations has increased significantly under the TE/GE Division. There is no assurance that any IRS examination of the Bonds will not adversely affect the market value of the Bonds.

Interest earned on the principal amount of the Bonds may or may not be subject to state or local income taxes under applicable state or local tax laws. Each purchaser of Bonds should consult his or her own tax advisor regarding the taxable status of the Bonds in a particular state or local jurisdiction.

## **Environmental Risks**

The Issuer has obtained an environmental assessment of the Project site and has no reason to believe that any of the site has any environmental problems. However, if in the future a site were found to be environmentally contaminated, the financial condition of the Issuer could be adversely affected. If the site were declared a “Superfund” site under the Comprehensive Environmental Response, Compensation and Liability Act, the federal government may require a clean-up of the site and the Issuer may be required to pay all or part of such clean-up costs. If the Issuer were unable to continue operations there because of its status as a Superfund site, the value of the site at foreclosure would be reduced by the cost of any clean-up. A copy of the Phase I Environmental Site Assessment Report is on file with the Underwriter.

## **Liability Insurance**

There is no guarantee that liability insurance will be available at reasonable prices.

## **Damage, Destruction or Condemnation**

Although the Issuer will be required to obtain certain insurance against damage or destruction as set forth in the Mortgage, there can be no assurance that the Project will not suffer losses for which insurance cannot be or has not been obtained or the amount of any such loss, or the period during which the Project cannot generate Revenues will not exceed the coverage of such insurance policies.

If the Project or any portion of the Project is damaged or destroyed, or is taken in condemnation proceedings, the revenues derived from such proceeds of insurance or any such condemnation award for the Project must be applied as provided in the Mortgage to restore or rebuild the Project or to redeem the Bonds. There can be no assurance that the amount of such proceeds available to restore or rebuild the

Project or to redeem the Bonds will be sufficient for that purpose, or that any remaining portion will generate Revenues sufficient to pay the expenses of the Project and the Debt Service on the Bonds remaining outstanding.

### **Enforcement of Remedies**

The Bonds are secured by the Indenture and by the Mortgage, which provides for the grant of a leasehold mortgage lien on and security interest in the Project, which includes a security interest in certain machinery, furnishings, equipment and fixtures in the Project and the Revenues. The practical realization of value from the property subject to the mortgage lien upon any default will depend upon the exercise of various remedies specified by the Indenture and the Mortgage. All of the remedies specified by the Indenture and the Mortgage may not be readily available or may be limited.

A court may decide not to order the specific performance of the covenants contained in those documents. The various legal opinions to be delivered concurrently with the delivery of the Bonds will be qualified as to the enforceability of the various legal instruments by limitations imposed by state and federal laws, rulings and decisions affecting the enforcement of creditors' rights generally. Legislation regarding students' rights may limit the enforceability of and remedies under, the Indenture and the Mortgage.

Defaults under the Indenture may give rise to the redemption of the Bonds. Upon any such redemption, proceeds, including proceeds from the foreclosure or other liquidation of the Project will be applied as provided in the Indenture, including, to the extent available after payment of certain costs, fees, expenses and indemnification of the Trustee, to pay the Bonds in the order of priority set forth in the Indenture. Such payment or distribution to the owners of the Bonds may not be sufficient to retire in full all of the Bonds.

### **Resale Value of the Project Upon Default**

Upon a default in payment of the Bonds, the Trustee would be entitled to exercise its remedies under the Mortgage and the Indenture. It is possible that the proceeds of such remedies would not be in an amount sufficient to pay the principal of and accrued interest on the Bonds. Furthermore, if the Issuer seeks to reorganize under Chapter XI or other provisions of the Federal Bankruptcy Code, the Trustee may be prevented by the bankruptcy court from foreclosing on the Project and the assets for an extended period of time. The Trustee, before taking any remedial action against the Premises may have to conduct an environmental investigation of the Project even though certain environmental investigations have been made as of this date. The Trustee may conclude as a result of such environmental investigation that taking any action against the Facility, by foreclosure or otherwise, is not feasible.

### **Effect of Bankruptcy**

Bankruptcy proceedings and equitable principles may delay or otherwise adversely affect the enforcement of the Bondholders' rights under the Mortgage. Federal bankruptcy law may have an adverse effect on the ability of the Trustee and the holders of Bonds to enforce their claim to the security granted by the Indenture. Federal bankruptcy law permits adoption of a reorganization plan even though it has not been accepted by the holders of a majority in aggregate principal amount of the Bonds, if the holders are provided with the benefit of their original lien or the "indubitable equivalent." In addition, if the bankruptcy court concludes that the holders of the Bonds have "adequate protection," it may (i) substitute other securities subject to the lien of the holders, and (ii) subordinate the lien of the holders (a) to claims by persons supplying goods and services to the Issuer after bankruptcy, and (b) to the administrative expenses of the bankruptcy proceedings. If the Issuer becomes bankrupt, the amount

realized by the holders of the Bonds may depend on the bankruptcy court's interpretation of "indubitable equivalent" and "adequate protection" under the existing circumstances. The bankruptcy court may also have the power to invalidate certain provisions of the Indenture or the Mortgage which make bankruptcy and related proceedings by the Issuer an event of default thereunder. Further, if the Issuer becomes bankrupt, payments on the Bonds made by the Issuer (through the Trustee) to the holders of the Bonds within 91 days before the filing of the petition in bankruptcy by or against the Issuer may be determined to be voidable preferences subject to claims by a debtor in possession or a trustee in bankruptcy.

### **Limited Transferability of Bonds**

The Bonds will not be registered with the Securities and Exchange Commission under the Securities Act of 1933 or under any state securities laws. The Issuer does not presently intend to apply for any ratings on the Bonds, and has not obtained municipal bond insurance or other security devices in connection with the issuance of the Bonds.

No assurance can be given that a market will exist for the resale of the Bonds. Because of general market conditions or because of adverse history or economic prospects connected with a particular bond issue, secondary marketing practices in connection with a particular issue may be suspended or terminated. Additionally, prices of issues for which a market is being made will depend upon then prevailing circumstances. Such prices could be substantially different from the original purchase price. **THERE CAN BE NO GUARANTEE THAT THERE WILL BE A SECONDARY MARKET FOR THE BONDS, OR, IF A SECONDARY MARKET EXISTS, THAT THE BONDS CAN BE SOLD FOR ANY PARTICULAR PRICE.**

### **Other Risk Factors**

In the future, the following factors, among others, may adversely affect the operating results of the Project to an extent that cannot be determined at this time:

The establishment of mandatory governmental wage or price controls.

The loss of accreditation of the College.

The occurrence of a natural disaster, including floods, hurricanes, or tornadoes, which might damage the Project or otherwise impair the ability of the Project to generate revenues.

Unionization, employee strikes or other adverse labor action which could result in substantial increases in expenditures.

Increases in the costs of construction materials.

### **Summary**

The foregoing is intended only as a summary of some of the risk factors attendant to an investment in the Bonds. An investment in the Bonds involves a substantial element of risk and is speculative in nature. The relatively high interest rate borne by the Bonds (as compared to prevailing interest rates on more secure tax-exempt bonds such as those which constitute general obligations of fiscally sound municipalities or states) is intended to serve as compensation to the investor for assuming this element of risk. In order to identify risk factors and make an informed investment decision, potential investors should be thoroughly familiar with this entire Official Statement (including the Appendices hereto). Purchasers of the Bonds, particularly purchasers that are corporations (including subchapter S corporations and foreign corporations operating branches in the United States of America), property or casualty insurance companies, banks, thrifts or other financial institutions or certain recipients of Social

Security benefits, are advised to consult their tax advisors as to the tax consequences of purchasing or holding the Bonds.

## **TAX MATTERS**

The Internal Revenue Code of 1986, as amended (the “Code”), establishes certain requirements which must be met after the issuance and delivery of the Bonds for interest thereon to be and remain excluded from gross income for Federal income tax purposes. Noncompliance with such requirements could cause the interest on the Bonds to be included in gross income for Federal income tax purposes retroactive to the date of issue of the Bonds. The Issuer has covenanted in the Indenture to comply with each applicable requirement of the Code necessary to maintain the exclusion of the interest on the Bonds from gross income for Federal income tax purposes pursuant to the Code. In furtherance of such covenant, the Issuer agrees to comply with the provisions of the Tax Certificate as may be amended from time to time, as a source of guidance for achieving compliance with the Code.

In the opinion of Sell & Melton, L.L.P., Bond Counsel (see Appendix G attached hereto), under existing laws, regulations, and court decisions, as enacted and construed on the date of such opinion, and assuming compliance with the aforementioned covenants, interest on the Bonds is excluded from gross income for Federal income tax purposes.

In the opinion of Bond Counsel, interest on the Bonds is not, under existing laws, regulations and court decisions, an item of tax preference for purposes of the Federal alternative minimum tax imposed on individuals and corporations; it should be noted, however, for purposes of computing certain environmental taxes, the branch profits tax imposed on certain foreign corporations, and the alternative minimum tax imposed on certain corporations, such interest is taken into account in determining adjusted current earnings.

Ownership of the Bonds may result in collateral Federal income tax consequences to certain taxpayers, including, without limitation, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, foreign corporations engaged in a trade or business in the United States and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry the Bonds. In addition, for purposes of the Superfund Amendments and Reauthorization Act of 1986, “alternative minimum taxable income” includes interest on all tax-exempt bonds to the same extent and in the same manner as in the Code.

Passive investment income, including interest on the Bonds, may be subject to Federal income taxation under Section 1375 of the Code for Subchapter S corporations that have Subchapter S earnings and profits at the cost of the taxable year, if greater than 25% of the gross receipts of such Subchapter S corporation is passive investment income; and the receipt of interest on the Bonds may cause disallowance of the earned income credit under Section 32 of the Code.

There may be additional modifications or amendments to the Code or other additional proposals, such as the Superfund Act described above, that, if enacted into law, would cause interest on the Bonds to be subject to Federal income tax, and there can accordingly be no assurance that such modifications, amendments for proposals will not adversely affect the exclusion from gross income for Federal income tax purposes of interest on the Bonds.

Prospective owners of the Bonds should consult with their own tax advisors with respect to the foregoing and other tax consequences of owning the Bonds. Other than Bond Counsel’s opinion with respect to the exclusion of interest on the Bonds from gross income pursuant to Section 103 of the Code for Federal income tax purposes described above, Bond Counsel has expressed no opinion with regard to



the matters discussed under this caption or with regard to any other Federal tax consequences of owning the Bonds. It should be noted that Bond Counsel has expressed no opinion with respect to any exemption from any taxes imposed by the State of Florida or any other state on the Bonds or the interest or income thereon.

**PURCHASE, OWNERSHIP OR SALE OR DISPOSITION OF THE BONDS AND THE RECEIPT OF THE INTEREST THEREON MAY HAVE ADVERSE FEDERAL TAX CONSEQUENCES FOR CERTAIN INDIVIDUALS AND CORPORATE BONDHOLDERS. PROSPECTIVE OWNERS OF THE BONDS SHOULD CONSULT WITH THEIR OWN TAX ADVISORS WITH RESPECT TO THE FOREGOING AND OTHER TAX CONSEQUENCES OF OWNING THE BONDS. OTHER THAN BOND COUNSEL'S OPINION WITH RESPECT TO THE EXCLUSION OF INTEREST ON THE BONDS FROM GROSS INCOME PURSUANT TO SECTION 103 OF THE CODE FOR FEDERAL INCOME TAX PURPOSES DESCRIBED ABOVE, BOND COUNSEL HAS EXPRESSED NO OPINION WITH REGARD TO THE MATTERS DISCUSSED UNDER THIS CAPTION OR WITH REGARD TO ANY OTHER FEDERAL TAX CONSEQUENCES OF OWNING THE BONDS.**

#### **Original Issue Discount.**

The Bonds that mature on November 1, 2042 (the "Discount Bonds"), are being initially offered and sold to the public at a discount ("OID") from the amounts payable at maturity thereon. OID is the excess of the stated redemption price of a bond maturity (the face amount) over the "issue price" of such bond. The issue price is the initial offering price to the public (other than to bond houses, brokers or similar persons acting in the capacity of underwriters or wholesalers) at which a substantial amount of bonds of the same maturity are sold pursuant to that initial offering. For federal income tax purposes, OID on each bond will accrue over the term of the bonds. The amount accrued will be based on a single rate of interest, compounded semiannually (the "yield to maturity") and, during each semi-annual period, the amount will accrue ratably on a daily basis. The OID accrued during the period that an initial purchaser of a Discount Bond at its issue price owns it is added to the purchaser's tax basis for purposes of determining gain or loss at the maturity, redemption, sale or other disposition of that Discount Bond. In practical effect, accrued OID is treated as stated interest, that is, is treated as excludible from gross income for federal income tax purposes. In addition, original issue discount that accrues in each year to an owner of a Discount Bond is included in the calculation of the distribution requirements of certain regulated investment companies and may result in some of the collateral federal income tax consequences discussed herein. Consequently, owners of any Discount Bond should be aware that the accrual of original issue discount in each year may result in an alternative minimum tax liability, additional distribution requirements or other collateral federal income tax consequences although the owner of such Discount Bond has not received cash attributable to such original issue discount in such year. Owners of such Discount Bonds should consult their own tax advisors as to the treatment of OID and the tax consequences of the purchase of such Discount Bonds other than at the issue price during the initial public offering and as to the treatment of OID for state tax purposes.

THE FOREGOING IS NOT INTENDED TO BE AN EXHAUSTIVE DISCUSSION OF COLLATERAL TAX CONSEQUENCES ARISING FROM RECEIPT OF INTEREST ON THE BONDS. BONDHOLDERS SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE CALCULATION OF ALTERNATIVE MINIMUM TAX, OR FOREIGN BRANCH PROFITS TAX LIABILITY, THE INCLUSION OF SOCIAL SECURITY OR OTHER RETIREMENT PAYMENTS IN TAXABLE INCOME AND OTHER COLLATERAL TAX CONSEQUENCES.

## **RATING**

Standard & Poor's Ratings Service, a division of The McGraw-Hill Companies, Inc. ("S&P") has assigned the Bonds a long-term rating of "BB+". Such ratings may also be withdrawn or reduced at any time.

Generally, a Rating Service bases its ratings on information and materials furnished to them and on investigations, studies and assumptions by such rating agency. Such ratings will reflect only the views of such rating agency at the time such ratings are issued, and an explanation of the significance of such ratings may be obtained from such rating agency. A rating is not a recommendation to buy, sell or hold the Bonds; and there is no assurance that such rating will continue for any given period of time or will not be revised downward, suspended or withdrawn entirely by such rating agency if, in its judgment, circumstances so warrant. Any such lowering, suspension or withdrawal of either rating might have an adverse effect on the market price or marketability of the Bonds.

## **FORWARD-LOOKING STATEMENTS**

Certain statements in this Official Statement that relate to the Project and the College including, but not limited to, statements under the captions "THE PROJECT/THE FACILITY", "THE ISSUER", "THE COLLEGE" and "SOURCES AND USES OF FUNDS" and "Market Analysis" attached hereto as APPENDIX D, "Findings, Opinions and Conclusions of the Phase I Environmental Site Assessment" attached hereto as APPENDIX E and "Financial Pro Forma" attached hereto as APPENDIX F, are forward-looking statements that are based on the beliefs of, and assumptions made by, the Issuer and the preparers of the reports. Such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause the actual results or performance of the Project and the Issuer to be materially different from any expected future results or performance. Such factors include, but are not limited to, items described in "BONDHOLDERS' RISKS".

## **UNDERWRITING**

The Bonds are being purchased by the Underwriter, subject to certain terms and conditions set forth in a Bond Purchase Agreement between the Issuer and the Underwriter, including the approval of certain legal matters by Bond Counsel and the existence of no material adverse change in the condition of the Issuer's finances from that set forth in the Official Statement.

The Underwriter is offering the Bonds at the prices set forth on the cover hereof. The initial offering prices may be changed from time to time and concessions from the offering prices may be allowed to dealers, banks and others. The Underwriter has purchased the Bonds and is being paid an Underwriter's fee of \$415,250.00. From this fee, the Underwriter will pay certain of its expenses relating to the offering.

The Underwriter does not guarantee a secondary market for the Bonds and is not obligated to make any such market in the Bonds. No assurance can be made that such a market will develop or continue. Consequently, investors may not be able to resell Bonds should they need or wish to do so for emergency or other purposes.

## **CONTINUING DISCLOSURE UNDERTAKING**

The Borrower has covenanted in the Continuing Disclosure Agreement to provide certain financial information and other operating data (the "Undertaking") as specified below to the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system ("EMMA") and to the State

Information Depository (the “SID”), if any, annually and to provide notice to EMMA and the SID, if any, of certain events pursuant to Rule 15c2-12 (17 CFR Part 240, § 240.15c2-12) (the “Rule”). Capitalized terms used in this section and not otherwise defined in the Continuing Disclosure Agreement shall have the meanings assigned under the Rule.

While any Bonds are Outstanding, the Borrower will provide the Annual Financial Information not more than 180 days after the end of each Fiscal Year (the “Report Date”), beginning in 2010, to EMMA and the SID, if any. The Borrower may adjust the Report Date if it changes its fiscal year, or to conform with a change in federal, state or local law, by providing written notice of the change in fiscal year, if applicable, and the new Report Date to each then existing EMMA and the SID, if any, provided that the new Report Date shall be no more than 200 days after the end of the Fiscal Year then in effect, and further provided that the period between the last Report Date prior to the change and the first Report Date after the change shall not be longer than one year. It shall be sufficient if the Borrower provides to EMMA and the SID, if any, the Annual Financial Information by specific reference to documents previously provided to EMMA and the SID, if any, or filed with the Securities and Exchange Commission and, if such a document is a final official statement within the meaning of the Rule, available from the MSRB.

If Audited Financial Statements are not provided as part of the Annual Financial Information, the Borrower will provide Audited Financial Statements when and if available while any of the Bonds are Outstanding to EMMA and the SID, if any.

If a Material Event occurs while any Bonds are Outstanding, the Borrower shall provide a Material Event Notice in a timely manner to EMMA and the SID, if any. Each Material Event Notice shall be so captioned and shall prominently state the date, title and CUSIP numbers of the Outstanding Bonds. Any of the following events would constitute a Material Event with respect to the Bonds: (i) a principal or interest payment delinquency; (ii) a nonpayment related Event of Default under the Indenture; (iii) a draw on any debt service reserve fund; (iv) an adverse tax opinion or event affecting the tax exempt status of the A Bonds; (v) a material modification to the rights of Bondowners; (vi) a call of the Bonds (other than mandatory sinking fund redemptions); (vii) a defeasance; or (viii) any material release, substitution, or sale of property securing repayment of the Bonds.

The Borrower has not failed to comply with any prior Undertaking under the Rule. A failure by the Borrower to comply with the Undertaking will not constitute an Event of Default under the Indenture, or the Loan Agreement (although the Holders of the Bonds will have available remedies at law or in equity other than the collection of monetary damages). Nevertheless, such a failure must be reported in accordance with the Rule to the EMMA and the SID, if any, and must be considered by any broker, dealer or municipal securities dealer before recommending the purchase or sale of the Bonds in the secondary market. Consequently, such a failure may adversely affect the transferability and liquidity of the Bonds and their market price.

## **LEGAL MATTERS**

Certain legal matters incident to the validity of the Bonds, including their authorization, issuance, and sale by the Issuer are subject to the approval of Sell & Melton, L.L.P., Macon, Georgia, Bond Counsel, whose approving opinion will be delivered with the Bonds. The proposed form of such opinion is attached hereto as Appendix G. The matters stated in such opinion and the tax matters described above are the only matters which Bond Counsel has been retained to pass upon in connection with the transactions contemplated hereby.



The factual information contained herein relating to the Project has been supplied or reviewed by the Issuer. Certain legal matters are being passed upon for the Issuer and the College by their counsel, DeVane & Dorl, P.A., Marathon, Florida. Certain legal matters will be passed upon for the Underwriter by Hill Wallack LLP, Princeton, New Jersey. Copies of such opinions will be available at the time of delivery of the Bonds.

### **NO LITIGATION**

No litigation or proceedings are pending or, to the knowledge of the Issuer, threatened against the Issuer restraining or enjoining the issuance or delivery of the Bonds, questioning or affecting the validity of the Bonds or the proceedings and authority under which they are to be issued, questioning in any manner the right of the Issuer to enter into, or the validity or enforceability of, the Indenture, the Interlocal Agreement or the Leasehold Mortgage and Security Agreement, or the ability of the Issuer to secure the Bonds in the manner provided in the Indenture.

### **OTHER MATTERS**

The foregoing summaries and explanations do not purport to be comprehensive, and are expressly made subject to the exact provisions of documents referred to herein. Copies of the Indenture, the Management Agreement, and the mortgage may be obtained from the Trustee or, until initial delivery of the Bonds, the Underwriter. So far as any statements are made in this Official Statement involving matters of opinion, whether or not expressly so stated, they are intended merely as such and not as representations of fact. Forecasts of financial information set forth in the Introduction and in Appendix F, while based upon assumptions which the Issuer believes to be reasonable, are not guarantees that such results can be obtained and are subject to change. The Appendices to this Official Statement are integral parts of this Official Statement and should be read in their entirety.

The agreement of the Issuer with the Owners of the Bonds is fully set forth in the Indenture, the Mortgage, the Interlocal Agreement and the Bonds, and this Official Statement is not to be construed as constituting an agreement with any purchaser of the Bonds.

FLORIDA KEYS COLLEGE CAMPUS FOUNDATION, INC.

By: /s/\_\_\_\_\_

**APPENDIX A**  
**FORM OF THE INDENTURE**

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TRUST INDENTURE  
BETWEEN  
FLORIDA KEYS COLLEGE CAMPUS FOUNDATION, INC.  
(Issuer)  
AND  
ZIONS FIRST NATIONAL BANK (Trustee)  
AUTHORIZING  
\$8,305,000  
FLORIDA KEYS COLLEGE CAMPUS FOUNDATION, INC.  
SENIOR LEASEHOLD INDUSTRIAL DEVELOPMENT REVENUE BONDS  
(FLORIDA KEYS COMMUNITY COLLEGE PROJECT),  
SERIES 2010

Dated as of November 1, 2010

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## TRUST INDENTURE

THIS TRUST INDENTURE is made and entered into as of November 1, 2010, between FLORIDA KEYS COLLEGE CAMPUS FOUNDATION, INC. (the "Issuer"), a not-for-profit corporation organized and existing under the laws of the State of Florida, and ZIONS FIRST NATIONAL BANK, as trustee (said bank and any bank or trust company becoming successor trustee under this Trust Indenture (this "Indenture") being herein called the "Trustee"). All capitalized terms used herein shall have the meanings provided in Article 1 hereof.

### WITNESSETH:

WHEREAS, by virtue of the authority of the Issuer's Articles of Incorporation, the Act, other applicable provisions of the law of the State, and pursuant to the Bond Resolution, as hereinafter defined, the Issuer is authorized to enter into this Indenture and to do or cause to be done all the acts and things herein provided or required to be done, and to issue and use the proceeds of its Senior Leasehold Industrial Development Revenue Bonds, Series 2010 (hereinafter the "Bonds"), dated as of their date of authentication and delivery, in the respective aggregate principal amount set forth herein (the "Bonds" as hereinafter more particularly defined) as set forth herein; and

WHEREAS, by resolution, Florida Keys Community College (the "College") has authorized the Issuer to issue, for the benefit of the College, the Bonds, in one or more series, bearing such series and year designation as may be determined by the Issuer, payable from such revenues related to the Bonds and the Project (hereinafter defined), secured by a Leasehold Mortgage and Security Agreement (the "Mortgage") (hereinafter defined), bearing interest at a rate not to exceed the maximum legal rate, with such redemption, maturity, sinking fund and other features as may be determined by the Issuer, subject to applicable law, the interest on which may be exempt or not exempt from inclusion in gross income for federal income tax purposes, and whether in book entry only form or in certificate form, all as may be determined by the Issuer; and

WHEREAS, the Issuer has determined, for the benefit of the College, to issue and sell the Bonds for the purposes described above and to secure the Bonds by the pledge and assignment of the Revenues (including those revenues, if any, derived from the Interlocal Agreement hereinafter defined) and the Mortgage; and

WHEREAS, all acts and conditions required to happen, exist and be performed precedent to and in the issuance of the Bonds and the execution and delivery of this Indenture have happened, exist and have been performed, or at the delivery of the Bonds will exist, will have happened and will have been performed (i) to make the Bonds, when issued, delivered and authenticated, valid obligations of the Issuer in accordance with the terms hereof and (ii) to make this Indenture a valid, binding and legal trust agreement for the security of the Bonds in accordance with its terms; and

WHEREAS, to provide dormitory living space for students of the College, the Issuer has authorized the issuance of the Bonds to provide funds to the Issuer to finance the cost of the acquisition by lease of approximately .53 acres of land located on the campus of the College in Monroe County, Florida, the construction thereon of the

Facility and the payment of the costs incidental thereto, including the cost of issuing the Bonds, and to fund capitalized interest and reserves for the payment of the Bonds to the extent required herein (hereinafter the "Project"); and

WHEREAS, under the Tax Certificate hereinafter more particularly described, the Issuer has agreed to comply with all of the requirements of the Internal Revenue Code of 1986 (the "Code") necessary to maintain the exclusion from gross income of the interest on the Bonds, including Section 148 of the Code; and

WHEREAS, the Issuer has determined to issue the Bonds and to enter into this Indenture to secure the Bonds by, among other things, a pledge and assignment to the Trustee of the Revenues, and by the execution and delivery of the Mortgage; and

WHEREAS, the Trustee has accepted the trusts created by this Indenture, and in evidence thereof has joined in the execution hereof; and

WHEREAS, all things necessary to make the Bonds, when authenticated by the Trustee and issued as provided in this indenture, the valid, binding and legal obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid assignment and pledge of the Revenues for the payment of the principal of and interest on the Bonds, and the creation, execution and delivery of this Indenture, and the creation, execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, in consideration of the foregoing, it is expressly declared that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all of the Revenues are to be dealt with and disposed of, under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes hereinafter expressed, and the Issuer hereby agrees and covenants with the Trustee and with the Owners of the Bonds, as follows:

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## ARTICLE I

### DEFINITIONS AND USE OF WORDS AND PHRASES

**SECTION 1.01. Definitions.** The terms defined in this Section 1.01 shall have meanings provided herein for all purposes of this Indenture, unless some other meaning is plainly intended.

"Act" means the Florida Statutes Annotated, Sections 159.25 et seq., as amended.

"Act of Bankruptcy" means the filing of a voluntary petition in bankruptcy by the Issuer or the entry of an order for relief in any bankruptcy proceeding involving the Issuer as a debtor, or the filing by the Issuer of any petition or answer seeking any arrangement, reorganization, composition, readjustment or similar relief under any present or future bankruptcy or other applicable law, or the Issuer shall seek or consent to or acquiesce in the appointment of any trustee, receiver, or liquidator of Issuer of all or any substantial part of Issuer's properties.

"Account" means any of the trust accounts created pursuant to Article V hereof.

"Additional Bonds" means any Bonds issued, delivered and sold pursuant to Section 2.12 of this Indenture.

"Administration Expenses" means the Trustee's Fee, the rebate analyst fee, and any expenses of the College and Issuer attributable to the Bonds.

"Amortization Installment" with respect to any stated maturity of Term Bonds, means an amount or amounts so designated which is or are established for the Term Bonds of such maturity by Section 2.02 of this Indenture for a particular year and the principal amount of any Bonds maturing in such year.

"Amortization Account" means the account created by Section 5.01 of this Indenture.

"Arbitrage Rebate instructions" means the Arbitrage Rebate Instructions as to compliance with provisions of Section 1.03 (a) and 148 of the Code, delivered by Bond Counsel and executed by the Issuer on the date of initial issuance and delivery of the Bonds, as such Arbitrage Rebate Instructions may be amended from time to time, and which serves as a source of guidance for achieving compliance with the Code.

"Architect" means any person or firm licensed to practice architecture in the State and acceptable to the Issuer.

"Authorized Denominations" means, \$5,000 plus integral multiples of \$5,000 in excess thereof unless the holdings of an Owner are reduced below \$5,000 by principal payments or partial redemptions.

"Authorized Issuer Representative" means the person at the time designated to act on behalf of the Issuer in matters related to the Bonds by a written instrument furnished to the Trustee containing the specimen signature of such person and signed on behalf of the Issuer by any of its officers. The certificate may designate an alternate or alternates, by providing written notice to the Trustee.

"Bond Counsel" means Sell & Melton, L.L.P., or its successors, or other nationally recognized bond counsel acceptable to the Issuer and the College.

"Bond Documents" means this Indenture, the Interlocal Agreement, the Mortgage and any other documents executed by the Issuer in connection with the issuance of the Bonds.

"Bond Fund" means the trust fund by that name created pursuant to Section 5.01(a) hereof.

"Bond Purchase Agreement" means the Bond Purchase Agreement, dated November 8, 2010, between the Issuer and the Underwriter.

"Bond Resolution" means, when used with reference to the Bonds, the resolution or resolutions of the Board of Directors of the Issuer providing for the issuance of the Bonds and approving the form of the Indenture, the Interlocal Agreement, the Bond Purchase Agreement and the Mortgage and related documents, and authorizing certain actions.

"Bonds" means the Bonds issued by the Issuer pursuant to Section 2.01 of this Indenture, and any Additional Bonds which may be issued in accordance with the provisions hereof.

"Business Day" means any day other than (i) a Saturday or Sunday, (ii) a day on which banks and savings and loan associations located in New York, New York, Chicago, Illinois or in the State, or the city in which the Trustee has its principal corporate trust office, are authorized to close, (iii) a day on which The New York Stock Exchange is closed, or (iv) a day on which the principal office of the Trustee or the Securities Depository, if any, is not conducting business.

"Capitalized Interest Account" means the trust account by that name established within the Bond Fund pursuant to Section 5.01(a) of this Indenture.

"Code" means the Internal Revenue Code of 1986, as such may be amended and supplemented, and the United States Treasury Regulations proposed or in effect with respect thereto and applicable to the Bonds or the use of the proceeds thereof.

"College" means the Florida Keys Community College, a political subdivision of the State created and existing under the Constitution and laws of the State.

"Completion Date" means the date by which construction of the Facility has been completed and a certificate of occupancy has been issued.



"Contractor" means Sikon Construction Company, LLC, a Florida limited liability company.

"Co-Trustee" means any entity appointed as co-trustee by the Trustee pursuant to Section 9.24 hereof, its successors or assigns.

"Condemnation Award" means the total condemnation proceeds actually paid or payable by the condemnor as a result of the condemnation of all or any part of the Real Property or the Project.

"Costs of Issuance" means the Issuer's expenses, the College's expenses, the Trustee's Fee and expenses, the fees and expenses of Issuer's Counsel and all other fees, including the cost of a title insurance policy, and costs and expenses incurred in connection with the issuance of the Bonds that are to be paid from the proceeds of the Bonds.

"Costs of Issuance Account" means the trust account by that name established within the Permitted Cost Fund pursuant to Section 5.01(c) hereof.

"College" means Florida Keys Community College, a political subdivision of the State.

"Days' Cash on Hand" means the number determined as of the last day of each fiscal quarter of the Issuer by (A) multiplying (i) the number of days in such fiscal quarter by (ii) the amount of cash and cash equivalents (determined by reference to the Issuer's financial statements for each such date), and (B) dividing the amount determined in clause (A) by an amount equal to the total operating expenses of the Facility for such fiscal quarter, less any bad debts to the extent included in such operating expenses and all depreciation and amortization attributed to the Facility for such fiscal quarter.

"Days' Cash on Hand Requirement" means the requirements described in Section 12.01(b) hereof.

"Debt Service Coverage Ratio" means the Debt Service Coverage Ratio (expressed as a percentage) described in Section 12.01(a) of this Indenture.

"Debt Service Reserve Fund" means the trust fund by that name created pursuant to Section 5.01(g) hereof.

"Default" and "Event of Default" mean any occurrence or event specified in Section 8.01 hereof.

"Defeasance Obligations" means non-callable investments consisting solely of one or more of the following:

- (a) cash;

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"Fiscal Year" means the annual period ending each June 30.

"Force Majeure" means acts of God, strikes, orders of political bodies, natural disasters, civil disturbances or any other cause or event of similar nature not reasonably within the control of the Issuer.

"Funds" means any of the trust funds created under Section 5.01 hereof.

"Governmental Obligations" means direct obligations of, or obligations the full and timely payment of principal of and interest of which are unconditionally guaranteed by, the United States of America. The obligations covered by this definition are limited to the following:

- (i) All direct or fully guaranteed obligations of the U.S. Treasury;
- (ii) Certificates of Beneficial Ownership of the Farmers Home Administration;
- (iii) Participation certificates of the General Services Administration; and
- (iv) GNMA-guaranteed participation certificates and GNMA-guaranteed mortgage backed securities of the Government National Mortgage Association (GNMA);

Provided, however, that book entry securities listed in any of the above categories must be held in a trust account with the Federal Reserve Bank or with a clearing corporation or chain of clearing corporations which has an account with the Federal Reserve Bank in the name of the Issuer and pledged to the Trustee.

"Improvements" means the Facility constructed upon the real property, including fixtures thereon and property of any nature appurtenant thereto as part of the Project.

"Indenture" means this Indenture, dated as of November 1, 2010, between the Issuer and the Trustee, and all amendments and supplements hereto.

"Insurance Proceeds" means the total proceeds of insurance actually paid or payable by an insurance company under the policies of insurance required to be procured by the Issuer pursuant to this Indenture.

"Interlocal Agreement" means that certain Interlocal Agreement, dated as of November 1, 2010, between the Issuer and the College.

"Interest Payment Dates" means, with respect to the Bonds:

- (a) May 1 and November 1 of each year, beginning May 1, 2011;
- (b) the final maturity date of such Bonds;

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- (b) State and Local Government Series issued by the United States Treasury ("SLGS");
- (c) United States Treasury bills, notes and bonds, as traded on the open market; and,
- (d) Zero Coupon United States Treasury Bonds.

"Determination of Taxability" shall mean a determination that the interest on any Bond does not qualify as excluded from gross income for federal income tax purposes ("exempt interest"), which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

- (a) the date on which any change in law or regulation becomes effective or on which the Internal Revenue Service has issued any private ruling, technical advice or other written communication to the effect that the interest income on any of the Bonds does not qualify as exempt interest; or
- (b) the date on which the Trustee shall receive notice in writing that the Trustee has been advised by any Bondholder that the Internal Revenue Service has issued a thirty-day letter or other notice which asserts that the interest on such Bond does not qualify as exempt interest; provided, however, that no Determination of Taxability shall be deemed to have occurred as a result of the events described in clause (a) above unless such determination is supported by a written opinion of Bond Counsel that it cannot render an opinion that the interest income on the Bonds constitutes exempt interest.

The redemption of the Bonds following the occurrence of a Determination of Taxability will not limit, modify or affect any other debt, duty, liability or obligation of the Issuer that may arise under the Indenture or the Mortgage.

"Developer" means Student Suites South Florida LLC, a Missouri limited liability company.

"Developer Reserve Account" means the trust account by that name established within the Permitted Cost Fund pursuant Section 5.01(c) of this Indenture.

"Electronic Means" Means telecopy, facsimile transmissions, e-mail transmission or other similar electronic means of communication providing evidence of transmission.

"Escrow Agreement" means the escrow deposit agreement by virtue of which the Issuer deposits with the Trustee, in compliance with Article VII hereof, cash, immediately available funds, or Defeasance Obligations, to bring about a defeasance of the Bonds.

"Facility" means the new one hundred (100)-bed college dormitory facility constructed for the benefit of the College by the Issuer as part of the Project.

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- (c) any date the principal amount of a Bond is paid pursuant to the provisions of the Indenture; and
- (d) any date any past-due interest on the Bonds is paid;

provided, however, that if any such date determined above is not a Business Day, the Interest Payment Date shall be the next succeeding date which is a Business Day.

"Investment Fund" means the fund by that name created pursuant to Section 5.01 hereof.

"Investment Securities" means any of the following which at the time of investment are legal investments under the laws of the State for the investment of the Issuer's funds:

- (i) Governmental Obligations;
  - (ii) Participation certificates (excluding stripped mortgage securities which are purchased at prices exceeding their principal amount and excluding interest only strips) and Senior Debt Obligations of the Federal Home Loan Mortgage Corporation (FHLMC);
  - (iii) Consolidated debt obligations of the Federal Home Loan Banks (FAL Banks); and
  - (iv) Federal National Mortgage Association (FNMA) Debt obligations and mortgage backed securities (excluding stripped mortgage securities which are valued greater than par on the portion of unpaid principal and excluding interest only strips);
- provided, however, that book entry securities listed in clause (i), (ii), (iii) and (iv) above must be held in a trust account with the Federal Reserve Bank or with a clearing corporation or chain of clearing corporations which has an account with the Federal Reserve Bank in the name of the Issuer;
- (v) Debentures of the Federal Housing Administration;
  - (vi) Commercial paper, payable in the United States of America, having original maturities of not more than 92 days and which are rated at least A-2 by S & P and Moody's;

(vii) Interest bearing demand or time deposits issued by state banks or trust companies or any national banking associations or any savings and loan associations, the senior debt obligations of which are rated "A" or better by S&P and Moody's and which are members of the Federal Deposit Insurance Corporation (FDIC); provided, in any such case, that such deposits are continuously and fully insured by FDIC; and

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(viii) Upon instructions from the Issuer, in money market mutual funds or portfolios, rated Am or Am-G or better by Standard & Poor's Ratings Group.

(ix) Guaranteed investment contracts approved by the Issuer; provided that such investment contract must be provided by an entity whose senior unsecured debt is rated "BBB" or better by S&P.

(x) All Investment Securities shall be limited to those instruments that have a predetermined fixed dollar amount of principal due at maturity that cannot vary or change. If the obligation is rated, it should not have an "r" highlighter affixed to its rating. Interest shall be payable at a fixed rate or shall be tied to a single interest rate index plus a single filed spread, if any, and move proportionately with that index.

(xi) Repurchase Agreements.

"Issuer" means Florida Keys College Campus Foundation, Inc., a Florida not-for-profit corporation and its successors and assigns.

"Issuer's Counsel" means William N. DeVane, Jr., Esq., DeVane & Dori, P.A., 5701 Overseas Highway, Suite 12, Marathon, Florida 33050-2784.

"Lease" means that certain Lease Agreement, dated as of November 1, 2010, between the College and the Issuer.

"Leased Real Property" means the parcel of real property located on the College campus and on which the Improvements are located. The legal description of such parcel appears as Exhibit "A" to this Indenture.

"Lien" means any lien, lease, pledge, security interest, claim, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any lien or security interest).

"Mail" means mail by first-class mail, postage prepaid, to Owners of the Bonds.

"Management Agreement" means the agreement pertaining to the management of the Project between the Issuer and the Manager, dated as of November 1, 2010, as amended from time to time.

"Management Consultant" means a Person of such qualifications in dormitory management that is acceptable to the Trustee.

"Manager" means the College or such other person or entity as may be selected from time to time by the Issuer, so long as such other person or entity shall enter into a Management Agreement that satisfies the safe harbor provisions of Revenue Procedure 97-13.

"Maturity Date" means the maturity date set forth in the attached Exhibit C.

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"Permitted Encumbrances" means (a) the lien on the Revenues created by this Indenture, the Lease, the Mortgage, and all moneys and securities remaining in the Funds and Accounts created hereby (except for moneys and securities set aside under Article VII hereof to bring about a defeasance of the Bonds or in the Rebate Fund) at the time that the Bonds are deemed paid, as provided in Section 7.01 hereof, or are no longer Outstanding, (b) the liens permitted under Section 12.06 hereof, (c) liens defined as Permitted Exceptions or Permitted Encumbrances under the Lease or Mortgage and (d) the reversionary interest of the College set forth in the lease of conveyance from the College to the Issuer of the .53 acre parcel on which the Facility will be located, which reversionary interest shall be subordinate to the lien of the Mortgage and Indenture.

"Person" means any natural person, corporation, cooperative, partnership, trust or unincorporated organization, government or governmental body or agency, political subdivision or other legal entity as in the context may be appropriate.

"Principal Office" or "principal office" of the Trustee or the Issuer means the office so designated by such entities. The principal offices of the Trustee and the Issuer shall be located at the respective addresses set forth in Section 13.08 hereof or any subsequent address designated pursuant to said Section.

"Project" means (1) the acquisition of a leasehold interest in approximately .53 acres of land located on the campus of the College in Monroe County, Florida, (2) the construction thereon of the Facility (3) the funding of various trust funds with the Trustee under this Indenture and (4) the payment of the costs of issuance of the Bonds (hereinafter, collectively, the "Project").

"Project Costs" means the costs financed with Bond proceeds and which are incurred by the Issuer to acquire and construct the Project, including without limitation, the following, but only to the extent chargeable to the Issuer's capital account:

(a) The costs of acquiring the Leased Real Property and title insurance, surveys, and documentary stamps;

(b) Fees in connection with the planning, execution, and financing of the Project, such as those of architects, engineers, attorneys, accountants and financial institutions;

(c) The costs of studies, surveys, plans, permits, insurance, interest, financing, tax and assessment costs, and other operating and carrying costs, including capitalized interest, during acquisition and construction of the Project;

(d) The costs of acquiring, constructing and equipping of the Project;

(e) The costs of land improvements, such as landscaping and other on site improvements; and

(f) The costs of such other items, including indemnity and surety bonds, and such other costs as shall be reasonable and necessary for the development of the Project.

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"Maximum Interest Rate" means the maximum interest rate allowable by applicable law.

"Moody's" means Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and their assigns, and, if such corporation shall for any reason no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized rating agency designated by the Issuer.

"Mortgage" means the Leasehold Mortgage and Security Agreement, dated as of the date hereof, from the Issuer, as mortgagor, to the Trustee, as mortgagee.

"Net Awards" means Condemnation Awards and Insurance Proceeds, less any attorneys' fees and expenses reasonably incurred in connection therewith, and other proper costs and expenses of recovery.

"OID" means original issue discount as described in Section 2.14 of this Indenture.

"Operating Expenses" shall mean the costs of operating and maintaining the Project, including the Senior Management Fee, but excluding debt service on the Bonds, the Repair and Replacement Reserve contribution and any other subordinate expenses.

"Outstanding" or "Bonds Outstanding" or "Outstanding Bonds" means, as of any given date, all Bonds which have been authenticated and delivered by the Trustee under this Indenture, except:

(a) Bonds cancelled at or prior to such date or delivered to or acquired by the Trustee or prior to such date for cancellation;

(b) Bonds deemed to be paid in accordance with Article VII of this Indenture; and

(c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered pursuant to this Indenture.

"Owner" or "Owners" or "Bondowner" or "Holder" means the person or persons in whose name any Bond is registered on the books of the Issuer maintained by the Trustee as Registrar.

"Paying Agent" means the Trustee and any other Paying Agent designated pursuant to this Indenture.

"Permitted Cost Fund" means the trust fund by that name created pursuant to Section 5.01(c) hereof.

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"Real Property" means the .53 acre parcel of land on which the Facility is located.

"Rebate Analyst" means such person or entity which may be appointed by the Issuer to perform the functions of the Rebate Analyst hereunder, including the determination of the Rebate Requirement.

"Rebate Fund" means the fund by that name created pursuant to Section 5.01 hereof.

"Rebate Requirement" means the amount of moneys required to be rebated to the United States Department of the Treasury, the calculation of which is set forth in the Tax Certificate.

"Record Date" means the fifteenth day of the month (whether or not a business day) next preceding an Interest Payment Date or the maturity date of the Bonds, if no default by the Issuer on any of its payment obligations on the Bonds has occurred.

"Registrar" shall mean such bond registrar as is provided by Section 9.21 hereof.

"Repair and Replacement Reserve Fund Contribution Requirement" means initially an annual amount equal to \$150 per residential bed. This requirement shall be increased annually by the greater of (i) 3% per annum or (ii) the amount recommended by a report obtained from an Independent person regarding recommended levels of funding.

"Revenue Fund" means the trust fund by that name created pursuant to Section 5.01 (b) hereof.

"Revenues" means (i) all rentals, revenues, unrestricted grants or grants earmarked for the Project or operation of the Facility (including rent subsidies), and fees receivable in respect of the Project, including, without limitation, any receipts from concessionaires servicing the Project, any vending machine and laundry machine or similar receipts, with respect to the Project (but exclusive of security deposits for residential or concessionaire units in the Project to the extent such security deposits are not applied to the payment of rentals); (ii) Net Awards; (iii) interest earned on moneys deposited in any fund or account hereunder except the Rebate Fund; (iv) any monetary recovery obtained by the Trustee through the exercise of its rights under the Mortgage, subject to the application thereof as provided in the Mortgage; moneys, if any, derived from the College pursuant to the provisions of the Interlocal Agreement; (v) all other moneys deposited in the Revenue Fund from whatever source, except from grants earmarked for purposes other than the support of the Project or operation of the Facility; and (vi) all proceeds of any thereof. "Revenues" shall not refer to the amounts on deposit in the Rebate Fund.

"Securities Depository" shall mean the registered owner of the Bonds under any book entry system and administrator of such book entry system for the Bonds.

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"Senior Management Fee" is the fee payable or to be paid to the Manager by the Issuer pursuant to the Management Agreement for the Manager's services in managing the Project.

"Special Record Date" means a day that is established as a special record date for the payment of defaulted interest as established by notice mailed by the Registrar to the Owners not less than fifteen days preceding such special record date with such notice being mailed to persons in whose names the Bonds are registered at the close of business on the fifth (5th) day preceding the date of mailing.

"State" means the State of Florida.

"Substitute Bonds" means Bonds issued pursuant to Section 2.09 hereof.

"Tax Certificate" means the Issuer's Non-Arbitrage and Tax Certificate dated as of the date of delivery of the Bonds.

"Term Bonds" means the Bonds of each maturity which by the provisions of this Indenture and any supplemental indenture creating such maturity shall be subject to retirement by operation of the Amortization Account.

"Trustee" means Zions First National Bank, as trustee, and any successor Trustee, at the time serving as such hereunder.

"Trustee's Fee" means the fee payable to the Trustee for acting as Trustee under this Indenture. The Trustee's counsel's fees and expenses and the Trustee's expenses shall be recoverable in addition to the amounts mentioned in the preceding sentence, but shall be deemed to be a part of the Trustee's Fee.

"Underwriter" means Bergen Capital, a division of Scott & Stringfellow, LLC, a BB&T Corporation Affiliate, a Virginia corporation.

**SECTION 1.02 Use of Words and Phrases.** "Herein," "hereby," "hereunder," "hereof," "hereinafter," "hereinafter," and other equivalent words refer to this Indenture as a whole and not solely to the particular portion thereof in which any such word is used. The word "may" means "may, but shall not be required to," and the word "including" shall mean "including, without limitation." The definitions set forth in Section 1.01 hereof include both singular and plural. Whenever used herein, any pronoun shall be deemed to include both singular and plural and to cover all genders. Any percentage of Bonds, specified herein for any purposes, is to be figured on the unpaid principal amount thereof then Outstanding.

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The aggregate amount of the principal and interest payments due on the Bonds under the Indenture which is to be deposited into the Bond Fund on or before each Interest Payment Date next preceding each mandatory sinking fund redemption date shall include amounts sufficient to redeem, on the respective mandatory sinking fund redemption date, the principal amount of Bonds set forth in the tables above (less the amount of any credit described below).

The Issuer shall have the option to deliver for cancellation to the Registrar any Bonds which mature on the Maturity Date, in any aggregate principal amount, and to receive a credit therefor against the mandatory sinking fund requirement (and corresponding mandatory redemption obligation) of the Issuer set forth opposite the year of the next succeeding mandatory redemption date for the Bonds maturing on the Maturity Date shown above.

That option shall be exercised by the Issuer on or before the forty-fifth (45<sup>th</sup>) day preceding the applicable mandatory sinking fund redemption date, by furnishing to the Trustee a certificate, executed by the Authorized Issuer Representative, setting forth the extent of the credit to be applied with respect to the mandatory sinking fund requirement for the Bonds. If the certificate is not furnished timely to the Trustee, no credit shall be made against the mandatory sinking fund requirement for the Bonds (and corresponding mandatory redemption obligation), although credits may be available against subsequent mandatory sinking fund requirements for the Bonds.

To the extent not applied theretofore as a credit against any mandatory sinking fund requirement for the Bonds, a credit against the mandatory sinking fund requirement for the Bonds (and the corresponding mandatory redemption obligation) described in the preceding paragraph shall be received also by the Issuer for Bonds which mature on the Maturity Date and which prior thereto have been redeemed other than through the operation of the mandatory sinking fund requirements or have been purchased for cancellation and canceled by the Trustee.

Each Bond so delivered, redeemed previously, or purchased and canceled, shall be credited by the Trustee at 100% of the principal amount thereof against the mandatory sinking fund requirement for the Bonds described above, subject to the completion of the procedures described above. Any excess of that amount over the then current mandatory sinking fund requirement of the Bonds shall be credited against subsequent mandatory sinking fund requirements for the Bonds in the order directed by the Issuer by following the procedures described above.

(b) Redemption.

(1) Special Mandatory Redemption.

(i) The Bonds shall be subject to special mandatory redemption at the principal amount thereof, plus accrued interest thereon to the date of redemption, and without premium, in whole on any date or in part on any Interest Payment Date upon the transfer of moneys to the Principal Account from the Net Awards Account pursuant to Section 5.05(c) of this Indenture.

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**ARTICLE II**

**THE BONDS**

**SECTION 2.01 Authority for and Issuance of Bonds.** There is hereby authorized and created under this Indenture an issue of bonds the aggregate principal amount of which (exclusive of any Substitute Bonds or Additional Bonds issued pursuant hereto) is limited to \$8,305,000 to be designated as "Florida Keys College Campus Foundation, Inc. Senior Leasehold Industrial Development Revenue Bonds (Florida Keys Community College Project), Series 2010" in the respective aggregate principal amounts set forth in Exhibit "C" attached hereto. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The Bonds shall be dated as of their date of authentication and delivery, and shall mature (subject to the right of prior redemption at the prices and dates and upon the terms and conditions hereinafter set forth), on the dates set forth herein.

Interest on the Bonds shall be payable semiannually on May 1 and November 1 of each year, beginning on May 1, 2011, such interest to be calculated on the basis of a 360-day year composed of twelve (12) thirty (30) day months. The Bonds shall bear interest from their date of authentication and delivery.

The Bonds shall be issuable only as fully registered certificated Bonds without coupons in Authorized Denominations in the form as provided in Exhibit "B" hereto, or as fully registered book entry bonds in Authorized Denominations. The Bonds shall be lettered "R-", and shall be numbered from one (1) consecutively upward.

Bonds issued in exchange for or upon the registration or transfer of Bonds on or after the first Interest Payment Date thereon shall bear interest from and be dated as of the Interest Payment Date immediately preceding the date of the Trustee's authentication thereof, unless the date of such authentication shall be an Interest Payment Date to which interest on the Bonds has been paid in full or duly provided for in accordance with the terms hereof, in which case they shall be dated as of such Interest Payment Date, or unless such Bonds are authenticated prior to May 1, 2011, in which event such Bonds shall bear interest from the original date of authentication and delivery; provided, however, that if, as shown by the records of the Trustee, interest on the Bonds is in default, in which event such Bonds shall bear interest from the date on which interest was last paid on such Bonds or, if no interest has yet been paid on the Bonds, from the initial date of authentication and delivery of the Bonds.

The interest, principal of and premium, if any, on the Bonds shall be payable in lawful money of the United States of America as provided in Section 2.13 hereof.

**SECTION 2.02 Maturity; Interest Rate; Redemption.**

(a) Maturity Interest Rates. The Bonds shall mature on November 1, 2042, shall bear interest at the rate of 7.00% per annum and shall be subject to redemption as set forth on the attached Exhibit C.

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(ii) The Bonds are also subject to special mandatory redemption prior to maturity in whole at any time on the earliest practicable date selected by the Trustee, and in no event later than 90 days, following the occurrence of a Determination of Taxability. The redemption price of the Bonds to be redeemed in such event shall be 105% of the principal amount thereof plus interest accrued to the redemption date.

(2) Sinking Fund Redemption. The Bonds are also subject to mandatory redemption in part prior to maturity by lot, using increments of \$5,000, in such manner as shall be determined by the Trustee, through Amortization Installments by operation of the Amortization Account, at redemption prices equal to 100% of the principal amount thereof plus interest accrued to the redemption date, on May 1 in the years and amounts set forth in Exhibit C.

(3) Mandatory Redemption on Default. The Bonds are also subject to mandatory redemption at the price of par plus interest accrued to the date of redemption if the Bonds shall be accelerated following the occurrence of an Event of Default as described in Section 8.02 hereof.

(4) (i) Optional Redemption. The Bonds are subject to redemption prior to their stated date of maturity at the option of the Issuer, in whole on any date on or after November 1, 2020, or in part, in such order of maturity as the Issuer may elect, and by lot within a maturity in increments of \$5,000, on November 1, 2020, or on any Interest Payment Date thereafter, at the following redemption prices (expressed as percentages of the principal amount of the Bonds so redeemed) plus accrued interest to the date of redemption if redeemed in the following years:

<u>Redemption Period (Both Dates Inclusive)</u>	<u>Redemption Price</u>
November 1, 2020 through October 31, 2021	102%
November 1, 2021 through October 31, 2022	101%
November 1, 2022 and thereafter	100%

(ii) The Bonds shall be subject to special optional redemption in whole or in part at the price of the principal amount thereof, plus accrued interest thereon to the date of redemption, and without premium, at the written direction of the Issuer on any date in the event that credit enhancement or a rating shall be obtained for all or part of the Bonds.

Any such redemption, either in whole or in part, shall be made in the manner and upon the terms and conditions provided in this Indenture.

Anything herein to the contrary notwithstanding, in no event shall the interest rate borne by any Bonds exceed the Maximum Interest Rate.

**SECTION 2.03 Execution.** The Bonds shall be executed on behalf of the Issuer, with the manual or facsimile signature of its President and shall have impressed or

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imprinted thereon, by facsimile or otherwise the official seal of the Issuer, and be attested with the manual or facsimile signature of its Secretary.

If any officer of the Issuer whose signature or whose facsimile signature shall appear on the Bonds shall cease to be such officer before the authentication of such Bonds, such signature or the facsimile signature thereof shall nevertheless be valid and sufficient for all purposes as if he or she had remained in office until authentication; and any Bond may be signed on behalf of the Issuer by such persons as are at the time of execution of such Bond proper officers of the Issuer, even though at the date of this Indenture such person was not such officer.

**SECTION 2.04 Temporary Bonds.** Pending preparation of definitive certificated Bonds, there may be executed, and upon request of the Issuer, the Trustee shall authenticate and deliver, in lieu of definitive Bonds and subject to the same limitations and conditions as such definitive Bonds, temporary typewritten, printed, engraved or lithographed certificated Bonds, in the form of registered Bonds without coupons in Authorized Denominations, substantially in the form of Exhibit "B" hereto and with such appropriate omissions, insertions and variations as may be required with respect to such temporary Bonds.

If temporary Bonds shall be issued, the Issuer shall cause the definitive Bonds promptly to be prepared and to be executed and delivered to the Trustee, and the Trustee, upon presentation to it at its Principal Office of any temporary Bond, shall cancel the same and authenticate and deliver in exchange therefor at the place designated by the Owner, without charge to the Owner thereof, a definitive Bond or Bonds of an equal aggregate principal amount, of the same maturity and bearing interest at the same rate as the temporary Bond surrendered. Until so exchanged, the temporary Bonds shall in all respects be entitled to the same benefit and security of this Indenture as the definitive Bonds to be issued and authenticated hereunder.

**SECTION 2.05 Pledge of Revenues; Mortgage; Limited Obligations.** Each Bond and the series of which it is a part is a limited obligation of the Issuer, and the principal thereof, premium, if any, and interest thereon are payable solely from the Revenues in the manner provided herein. There is hereby granted a lien upon and pledge of such Revenues to secure the Bonds in the manner herein provided. The Bonds are additionally secured by the Mortgage. The Mortgage, the Revenues and such Bond proceeds are hereby pledged and assigned to the Trustee to secure payment of such principal of, premium, if any, and interest on the Bonds, as provided herein. The Bonds shall not be a debt of the College, the State of Florida, or any political subdivision thereof, and neither the College, the State of Florida nor any political subdivision thereof shall be liable thereon; nor shall such Bonds be payable out of any funds or properties other than those of the Issuer, and then only to the extent herein expressly provided. The Bonds are a limited, non-recourse obligation of the Issuer.

**SECTION 2.06 Authentication.** No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Indenture unless and until a certificate of authentication on such Bond, substantially in the form set forth in the Bond, shall have been duly executed by the Trustee. Such executed certificate of the

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for any lost, stolen or destroyed Bond, there shall be first furnished to the Trustee evidence of such loss, theft or destruction satisfactory to the Trustee and the Issuer, together with indemnity satisfactory to them. If any such Bond shall be about to mature or have matured or been called for redemption, instead of issuing a duplicate Bond, the Trustee may pay the same without surrender thereof. The Issuer and the Trustee may charge the Owner of such Bond their reasonable fees and expenses in this connection.

(b) All duplicate Bonds Issued pursuant to this Section 2.09 ("Substitute Bonds") shall constitute original, contractual obligations of the Issuer (whether or not lost, stolen or destroyed Bonds be at any time found by anyone) and shall be entitled to equal and proportionate rights and benefits hereunder as all other Outstanding Bonds issued hereunder.

**SECTION 2.10 Registration and Exchange of Bonds: Persons Treated as Owners.** The Issuer shall cause books for the registration and transfer of the Bonds to be kept by the Trustee as Registrar as provided herein. At reasonable times and under reasonable regulations established by the Trustee, such list may be inspected and copied by the Issuer, or by Owners (or a designated representative thereof) of 10% or more in aggregate principal amount of Bonds then Outstanding.

Upon surrender for transfer or exchange of any Bond at its Principal Office, the Trustee shall authenticate and deliver in the name of the transferee or transferees in the case of transfer, or in the name of the Owner in the case of an exchange, a new fully registered Bond or Bonds of Authorized Denominations of the same series and maturity in the aggregate principal amount which the Owner is entitled to receive.

All Bonds presented for transfer, redemption or payment (if so required by the Issuer or the Trustee), shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature set forth in the form of Bond or as may be satisfactory to the Issuer and the Trustee, duly executed by the Owner or by his duly authorized attorney.

The Trustee and the Issuer shall not require the payment of any fee or charge upon the registration of transfer or exchange of Bonds, except that the Trustee may require payment from the Bondowner of a sum sufficient to cover any tax, governmental fee or other governmental charge that may be imposed in relation thereto. Such taxes, fees or charges shall be paid before any such new Bond shall be delivered.

The Issuer and the Trustee shall not be required to issue or register the transfer of any Bonds during a period beginning on the Record Date (or the Special Record Date if an Event of Default as defined in Section 8.01 hereof shall have occurred), and ending at the close of business on an Interest Payment Date or the redemption or maturity date, as the case may be.

Bonds delivered upon any transfer as provided herein, or as provided in Section 2.09 hereof, shall be valid limited obligations of the Issuer, evidencing the same debt as the Bonds surrendered, shall be secured by this Indenture and shall be entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.

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Trustee upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer or signatory of the Trustee, but the same officer or signatory need not sign the certificate of authentication on all of the Bonds issued hereunder.

**SECTION 2.07 Form of Bonds.** The Bonds issued under this Indenture shall be substantially in the form set forth in composite Exhibit "B" hereto, with such variations, omissions and insertions as are permitted or required by this Indenture.

**SECTION 2.08 Issuance and Delivery of Bonds.** Upon the execution and delivery of this Indenture, the Issuer shall execute and deliver the Bonds to the Trustee, and the Trustee shall authenticate the Bonds and shall deliver the Bonds to the Underwriter as directed by the Issuer; provided, however, that before the Trustee delivers any Bonds, the Trustee shall have received the following:

1. A duly certified copy of the Issuer's Articles of Incorporation and a Certificate of Good Standing of the Issuer issued by the State's Secretary of State;
2. A copy, duly certified by the President of the College, of the resolution of the College approving the Issuer and the terms of the Bonds, and any amendments thereto;
3. A copy, duly certified by the Secretary of the Issuer, of the resolutions of the Issuer authorizing the issuance of the Bonds and the execution and delivery of this Indenture, and any amendments thereto; and the resolution of the Issuer awarding such Bonds, and any amendments thereto, specifying the interest rate, maturity date and purchase price thereof and directing the authentication and delivery thereof;
4. Original executed counterparts of this Indenture, the Interlocal Agreement, the Mortgage and the Management Agreement;
5. A request and authorization to the Trustee on behalf of the Issuer, signed by the President or Vice President of the Issuer, to authenticate and deliver the Bonds to the Underwriter upon receipt of the net purchase price specified therefor and to deposit such net proceeds thereof in accordance with the provisions hereof; and
6. An opinion of Bond Counsel that all conditions precedent for the issuance of the Bonds have been satisfied and that the interest on the Bonds will be exempt from inclusion in gross income for federal income tax purposes.

**SECTION 2.09 Mutilated, Lost, Stolen or Destroyed Bonds.**

(a) If any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and the Trustee may authenticate and deliver a new Bond of like series date, maturity and denomination as that Bond mutilated, lost, stolen or destroyed; provided that for any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, together with such agreement to indemnification as is reasonably acceptable to the Trustee, and,

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The Issuer, the Trustee and the Paying Agent may treat the person in whose name a Bond is registered on the books of the Issuer maintained by the Trustee as the absolute Owner thereof for all purposes, whether or not such Bond shall be overdue, and shall not be bound by any notice to the contrary.

**SECTION 2.11 Destruction of Bonds.** Whenever any Outstanding Bond shall be delivered to the Trustee for cancellation pursuant to this Indenture, upon payment of the principal amount and interest represented thereby or for replacement pursuant to Section 2.09 hereof or transfer or exchange pursuant to Section 2.10 hereof, such Bond shall be cancelled and destroyed by the Trustee and counterparts of a certificate of destruction evidencing such destruction shall be furnished by the Trustee to the Issuer.

**SECTION 2.12 Additional Bonds.** The Issuer expressly reserves the right to issue, to the extent permissible under applicable law and this Indenture, Additional Bonds, to provide additional funds to complete, renovate, rehabilitate, improve or expand the Project, provided that:

- (i) no such obligations shall be pari passu with respect to the lien of the Mortgage and the pledge of the Revenues hereunder in favor of the Bonds unless at the time of issuance of the Bonds the Issuer shall deliver to the Trustee a certificate of an independent certified public accountant stating that the Revenues received by the Issuer during any twelve consecutive months (the "Test Period") of the eighteen (18) months immediately preceding the date of issuance of said Additional Bonds were at least equal in dollar amount to: (a) one hundred twenty-five percent (125%) of the average debt service requirement coming due in any Bond Year with respect to the Outstanding Bonds after setting aside an amount necessary to pay those costs described in clauses (i) and (ii) of Section 5.06(b) of this Indenture for such period (being any required deposit to the Rebate Fund, the Senior Management Fee due in such period, and the deposits to the Operating and Maintenance Fund required by the Budget of the Issuer for such period, exclusive of the amounts required to be paid to the Repair and Replacement Reserve Account) and (b) 105% of the maximum debt service requirement coming due in any Bond Year with respect to the Bonds and any Additional Bonds proposed to be issued, after setting aside an amount necessary to pay those costs described in clauses (i) through (vii) of Section 5.06(b) of this Indenture for such period (being any required deposit to the Rebate Fund for such period, all of the expenses of operating and maintaining the Project for such period, and debt service on the Bonds for such period); and
- (ii) in the event that such Additional Bonds are to be issued for the expansion of the Project, no such obligations shall be pari passu with respect to the lien of the Mortgage and the pledge of the Revenues hereunder in favor of the Bonds unless specific approval of the issuance of such Additional Bonds for such expansion is obtained from both the Issuer and the College.

"Debt Service" as used in this Section 2.12 shall be deemed to include interest due during such period, together with Amortization Installments scheduled for payment in such year and disregarding the principal amount due at maturity to the extent such principal will be paid from Amortization Installments.

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Notwithstanding the foregoing, the Issuer may, without producing the certificate of the independent certified public accountant described above issue Additional Bonds to refund and defease any Outstanding Bonds if the debt service in each Bond Year on such Additional Bonds is less than the debt service on the Bonds so refunded and such Additional Bonds do not mature later than such Bonds so refunded.

In addition, the Issuer may, without producing the certificate of the independent certified public accountant described above, issue Additional Bonds to provide additional funds to complete Improvements thereto within eighteen (18) months of the date of issuance of the Bonds, provided that:

(i) such Improvements are included in the Project and all revenues derived from such Improvements are included as Revenues as provided in this Indenture; and the requirements of this Indenture with respect to the perfection of the Lien of the Indenture and the Mortgage are satisfied;

(ii) a forecast statement of net cash flow before debt service relating to the Project including the Improvements to be included (the "Additional Bonds Forecast") is prepared and examined by a qualified firm in format similar to the examination of the Financial Forecast set forth in Appendix "A" of the Official Statement, and such Additional Bonds Forecast shall reflect that the projected coverage of net cash flow to debt service following the completion of such Improvements shall be at least as good or better than the projected coverage of net cash flow to debt service set forth in Appendix "A" of the Official Statement providing that (a) the Additional Bonds Forecast shall be based, to the extent it includes debt service applicable to the Bonds, upon the actual interest rates and prices borne by such Bonds, and (b) any other assumptions made in the Additional Bonds Forecast shall be made on a basis which is not more favorable than the assumptions made in the Financial Forecast set forth in Appendix A of the Official Statement.

(iii) the Issuer provide the Trustee with a certificate from an Authorized Issuer Representative that all of the prerequisites set forth in (i) and (ii) above have been satisfied. The Trustee may conclusively rely on such certificate.

**SECTION 2.13 Manner of Payment of Bonds.** Principal of and redemption premium, if any, shall be payable to the Owners of the Bonds upon presentation and surrender of the Bonds at the Principal Office of the Trustee. Interest on the Bonds shall be payable (i) by check drawn upon the Paying Agent and mailed on the Interest Payment Date to the Owners of the Bonds as of the close of business on the Record Date next preceding each Interest Payment Date at the registered addresses of such Owners as they shall appear on the registration books on such date notwithstanding the cancellation of any Bond upon any exchange or transfer thereof subsequent to the Record Date and prior to such Interest Payment Date, or (ii) in the case of Bonds in the minimum principal amount of \$500,000, by wire transfer on the Interest Payment Date in immediately available funds to Owners of Bonds as of the Record Date at such wire transfer address as such Owner shall specify to the Paying Agent if such Owner shall provide written notice to the Paying Agent not less than fifteen (15) days prior to such Interest Payment Date in which request for wire transfer payment is made and the wire

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corporations and certain other organizations. DTC is owned by a number of its Direct Participants and by the New York Stock Exchange, Inc., the American Stock Exchange, Inc., and the National Association of Securities Dealers, Inc. Access to the DTC system is also available to others such as securities brokers and dealers, banks and trust companies that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). The Rules applicable to DTC and its Participants are on file with the Securities and Exchange Commission.

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("Beneficial Owner") is in turn to be recorded on the Direct and Indirect Participants' records. Beneficial Owners will not receive written confirmation from DTC of their purchase, but Beneficial Owners are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

To facilitate subsequent transfers, all Bonds deposited by Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. The deposit of Bonds with DTC and their registration in the name of Cede & Co. effect no change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the Beneficial Owners. The Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Neither DTC nor Cede & Co. will consent or vote with respect to the Bonds. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal and interest payments on the Bonds will be made to DTC. DTC's practice is immediately to credit Direct Participants' accounts on the payable date in accordance with their respective holdings shown on DTC's records unless DTC has reason to believe that it will not receive payment on the payable date. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Trustee or the Issuer, subject to any statutory and regulatory requirements as may be in effect from time to time. Payment of principal and interest to DTC is the responsibility of the Issuer or the

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transfer address is specified. If the Issuer shall be in default in payment of interest due on such Interest Payment Date, such defaulted interest shall be payable to the Owner at the close of business on the Special Record Date.

**SECTION 2.14 Original Issue Discount.** The Bonds that mature on November 1, 2042 (the "Discount Bonds"), are being initially offered and sold to the public at a discount ("OID") from the amounts payable at maturity thereon. OID is the excess of the stated redemption price of a bond maturity (the face amount) over the "issue price" of such bond. The issue price is the initial offering price to the public (other than to bond houses, brokers or similar persons acting in the capacity of underwriters or wholesalers) at which a substantial amount of bonds of the same maturity are sold pursuant to that initial offering. For federal income tax purposes, OID on each bond will accrue over the term of the bonds. The amount accrued will be based on a single rate of interest, compounded semiannually (the "yield to maturity") and, during each semi-annual period, the amount will accrue ratably on a daily basis. The OID accrued during the period that an initial purchaser of a Discount Bond at its issue price owns it is added to the purchaser's tax basis for purposes of determining gain or loss at the maturity, redemption, sale or other disposition of that Discount Bond. In practical effect, accrued OID is treated as stated interest, that is, is treated as excludible from gross income for federal income tax purposes. In addition, original issue discount that accrues in each year to an owner of a Discount Bond is included in the calculation of the distribution requirements of certain regulated investment companies and may result in some of the collateral federal income tax consequences discussed herein. Consequently, owners of any Discount Bond should be aware that the accrual of original issue discount in each year may result in an alternative minimum tax liability, additional distribution requirements or other collateral federal income tax consequences although the owner of such Discount Bond has not received cash attributable to such original issue discount in such year. Owners of such Discount Bonds should consult their own tax advisors as to the treatment of OID and the tax consequences of the purchase of such Discount Bonds other than at the issue price during the initial public offering and as to the treatment of OID for state tax purposes.

**SECTION 2.15 Book-Entry-Only System.** The Depository Trust Company ("DTC"), New York, New York, will act as securities depository for the Bonds. The Bonds will be issued as fully-registered securities registered in the name of Cede & Co. (DTC's partnership nominee). One fully-registered certificate will be issued for each maturity of the Bonds, in the aggregate principal amount of such maturity of the Bonds, and will be deposited with DTC.

DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code and a "clearing agency" registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds securities that its participants ("Participants") deposit with DTC. DTC also facilitates the settlement among Participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in Participants' accounts, thereby eliminating the need for physical movement of securities certificates. Direct Participants include securities brokers and dealers, banks, trust companies, clearing

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Trustee, disbursement of such payments to Direct Participants shall be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners shall be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services with respect to the Bonds at any time by giving reasonable notice to the Issuer or to the Trustee. Under such circumstances, in the event that a successor securities depository is not obtained, certificates are required to be printed and delivered. The Issuer may decide to discontinue the system of book-entry transfers through DTC (or a successor securities depository). In that event, certificates will be printed and delivered.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Issuer believes to be reliable, but the Issuer takes no responsibility for the accuracy thereof.

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## ARTICLE III

### REDEMPTION OF BONDS

**SECTION 3.01 Redemption of Bonds.** The Bonds shall be subject to mandatory and optional redemption as set forth in Section 2.02 hereof.

**SECTION 3.02 Selection of Bonds to Be Redeemed.** A redemption of Bonds shall be a redemption of the whole or of any part of the particular Series of Bonds from any funds available for that purpose in accordance with the provisions of this Indenture. If less than all the Bonds of a Series shall be called for redemption under any provision of this Indenture permitting such partial redemption, the Trustee shall redeem such Bonds, by lot, in such manner as the Trustee in its discretion may deem proper, in the principal amount as required by this Indenture, in the event the Bonds of a Series shall mature on different dates, Bonds in the applicable principal amount shall be redeemed in the order elected by the Issuer. In the event of a partial redemption of any Term Bond, Amortization Installments for such Term Bond shall be reduced pro-rata as determined by the Issuer and set forth in a certificate to the Trustee.

#### **SECTION 3.03 Notice of Redemption.**

(a) If any of the Bonds are called for redemption, the Trustee shall give notice, in the name of the Issuer, of the redemption of such Bonds, which notice shall (i) specify the Bonds to be redeemed, the redemption date, the redemption price and the place or places where amounts due upon such redemption will be payable (which shall be the principal office of the Paying Agent) and, if less than all of the Bonds are to be redeemed, the numbers of the Bonds, and the portions of Bonds, so to be redeemed, and (ii) state that on the redemption date, the Bonds to be redeemed shall cease to bear interest. Such notice may set forth any additional information relating to such redemption. Such notice shall be transmitted to the Owners of Bonds to be redeemed not less than thirty (30) days nor more than sixty (60) days prior to the date fixed for redemption.

(b) Any Bonds which have been duly selected for redemption and which are deemed to be paid in accordance with Article VII hereof shall cease to bear interest on the specified redemption date.

(c) The Trustee shall not give notice of the redemption of any Bonds unless there shall be on deposit with the Trustee or Paying Agent funds sufficient to pay for such redemption. Such requirement, however, shall not apply in the case of redemptions pursuant to regularly scheduled Amortization Installments or refundings.

(d) When notice of redemption has been given in the manner provided above, and money sufficient for the redemption is held by the Trustee or Paying Agent for that purpose, the Bonds called for redemption shall become due and payable on the redemption date, and interest thereon shall cease to accrue. Thereafter, the Owners of such Bonds shall no longer be entitled to any security or benefit under this Indenture except to receive payment of the redemption price thereof.

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## ARTICLE IV

### GENERAL COVENANTS

**SECTION 4.01 Payment of Principal and Interest: No General Obligations.**

(a) The Issuer covenants that it will pay promptly the principal of, premium, if any, and interest on every Bond issued under this Indenture at the place, on the dates and in the manner provided herein and in the Bonds, provided that such principal, premium, if any, and interest are payable by the Issuer solely from the Revenues, and nothing in the Bonds or this Indenture shall be considered as assigning or pledging any other funds or assets of the Issuer other than the Revenues and other moneys pledged hereunder.

(b) Each covenant made herein by the Issuer is predicated upon the condition that neither the Issuer, its members, officers, agents, or employees, nor the State nor any political subdivision thereof shall be liable for the payment of the principal of, premium, if any, or interest on the Bonds, or the performance of any pledge, lease, obligation or agreement created by or arising under this indenture or the Bonds from any property other than the Revenues and other moneys pledged hereunder; and, further, that neither the Bonds nor any such obligation or agreement of the Issuer shall be construed to constitute an indebtedness of the College, the State or any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction, or as a pledge of the general credit, full faith or taxing power of the College, the State or any political subdivision thereof.

**SECTION 4.02 Performance of Covenants by Issuer: Due Execution.** The Issuer covenants that it will faithfully perform all covenants, undertakings, stipulations and provisions contained in this Indenture, in any Bond executed, authenticated and delivered hereunder and in all of its proceedings pertaining hereto. The Issuer covenants that it is duly authorized under the laws of the State, including particularly the Act, to issue the Bonds and to execute this Indenture, and to pay the amounts payable thereunder, and to pledge the amounts hereby pledged in the manner and to the extent herein set forth. The Issuer further covenants that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture have been duly and effectively taken, and that the Bonds in the hands of the Owners thereof are and will be valid and enforceable revenue obligations of the Issuer according to the terms thereof and hereof.

**SECTION 4.03 Recording and Filing: Instruments of Further Assurance.** The Issuer agrees that the Trustee may enforce the rights to the payments and other amounts due hereunder for the benefit of the Owners of the Bonds. The Issuer covenants that it will do, execute, acknowledge and deliver, or cause to be delivered, such indentures supplemental hereto and such further acts, instruments and transfers as may be reasonably required for the better assuring, transferring, pledging and assigning to the Trustee the rights assigned hereby and the amounts pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds. The Trustee shall have the responsibility for the filing of any continuation statements to financing statements

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**SECTION 3.04 No Partial Redemption After Default.** Anything in this Indenture to the contrary notwithstanding, if an Event of Default shall have occurred and be continuing hereunder there shall be no optional redemption of less than all of the Bonds at the time Outstanding.

**SECTION 3.05 Payment of Redemption Price.** For the redemption of any of the Bonds, the Issuer shall cause to be deposited in the Bond Fund, as applicable, solely out of the Revenues, Bond proceeds or proceeds of Net Awards to be used for such purpose, an amount sufficient to pay the principal of Bonds to be redeemed and interest to become due on the date fixed for such redemption. The obligation of the Issuer to cause any such deposit to be made hereunder shall be reduced by the amount of moneys in the Bond Fund, available to pay the Bonds to be redeemed.

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originally filed by or on behalf of the Issuer, as may be required to maintain in effect, the pledge provided in this Indenture or required to effectuate the purposes of this Indenture, and the Issuer will cooperate with the Trustee to effectuate the purposes of this Section. The costs thereby incurred shall be deemed to be Administration Expenses.

**SECTION 4.04 Further Instruments.** The Issuer shall, upon the reasonable request of the Trustee, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to effectuate the purposes of this Indenture or any provision hereof.

**SECTION 4.05 Operation, Maintenance and Reconstruction.** The Issuer shall at all times operate, or cause to be operated, the Project properly and in a sound, efficient and economical manner and shall maintain, preserve, and keep the same or cause the same to be maintained, preserved, and kept, with the appurtenances and every part and parcel thereof, in good repair, working order and condition, and shall from time to time make, or cause to be made, all ordinary, necessary and proper repairs, replacements and renewals so that at all times the operation of the Project may be properly and advantageously conducted, and, if any useful part of the project is damaged or destroyed, the Issuer shall, as expeditiously as may be possible, commence and diligently prosecute the ordinary replacement or reconstruction of such part so as to restore the same to use: provided, however, that nothing in the Indenture shall require the Issuer to operate, maintain, preserve, repair, replace, renew or reconstruct any part of the Project from sources other than the Revenues or Insurance Proceeds, or from Net Awards received under the circumstances described in Section 12.08 hereof.

**SECTION 4.06 Tax Covenants Relating to the Code.** The Issuer shall do the following with respect to the Bonds:

1. The Issuer shall comply with each applicable requirement of the Internal Revenue Code of 1986, as amended (the "Code") necessary to maintain the exclusion of interest on the Bonds from gross income for federal income tax purposes. In furtherance of the covenant contained in the preceding sentence, the Issuer agrees to comply with the provisions of the Tax Certificate executed by the Issuer on the date of the initial issuance and delivery of the Bonds, as such Tax Certificate may be amended from time to time, as a source of guidance for achieving compliance with the Code. The Issuer has retained the services of the Rebate Analyst and will require such Rebate Analyst to perform the duties set forth in the Tax Certificate.

2. The Issuer shall make any and all payments required to be made to the United States Department of the Treasury in connection with the Bonds pursuant to Section 148(1) of the Code from amounts on deposit in the funds and accounts established under this Indenture or otherwise available therefor.

3. Notwithstanding any other provision of this Indenture to the contrary, as long as necessary to maintain the exclusion from gross income of interest on the Bonds for federal income tax purposes, the covenants contained in this Section 4.06 shall survive the payment of the Bonds and the interest thereon, including any payment or defeasance thereof pursuant to Section 7.01 of this Indenture.

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4. The Issuer represents and warrants that it is an organization described by and is in compliance with the requirements set forth in Revenue Ruling 63-20. To the extent consistent with its status as a non-profit organization, the Issuer agrees that it will not take any action or omit to take any action which would cause any revocation or adverse modification of its status as a non-profit organization described in Revenue Ruling 63-20.

**SECTION 4.07 Maintenance of Existence; No Disposition of the Project or Revenues.** The Issuer agrees that, except as permitted in Section 13.01 hereof, during the term of this Indenture and so long as any Bond is outstanding, it will maintain its corporate existence, will continue to be a corporation not-for-profit in good standing under the laws of the State, will continue to qualify to transact business in the State, will not dissolve or otherwise sell, transfer or dispose of the Project or any substantial portion thereof and will not consolidate with or merge into another legal entity or permit one or more other legal entities to consolidate with or merge into it, or sell or otherwise transfer to another legal entity all or substantially all its assets as an entirety and dissolve, unless (i) (a) in the case of any merger or consolidation, the Issuer is the surviving corporation, or (h) the surviving, resulting or transferee legal entity is organized and existing under the laws of the State, and (if not the Issuer) (1) assumes in writing all the obligations of the Issuer under this Indenture and (2) is approved by the College; (ii) no event which constitutes, or which with the giving of notice or the lapse of time or both would constitute an Event of Default shall have occurred and be continuing immediately after such merger, consolidation or transfer; and (iii) an approving opinion of Bond Counsel is provided. In any such case, the Issuer shall promptly notify the Trustee in writing.

Except as permitted by this Indenture, the Issuer shall not sell, lease, pledge, assign or otherwise encumber or dispose of its interest in the Revenues, or the Project, and will promptly pay or cause to be discharged, or make adequate provision in the judgment of the Trustee to discharge, any lien or charge on any part thereof not permitted hereby.

**SECTION 4.08 Access to Books.** All books and documents in the possession of the Issuer relating to the Project, the revenues of the Issuer and the Revenues shall at all reasonable times be open to inspection by representatives of the Trustee, and by such accountants and attorneys or other Persons as the Trustee may from time to time designate.

**SECTION 4.09 Special Covenant of Issuer as to Provisions in Leases.** The Issuer covenants that so long as there are any Bonds Outstanding under this Indenture, all leases that it may enter into with respect to the Project shall provide that such leases are subject to the College's right to purchase the Facility and to the College's right of reversion, by which the College will obtain title at its option to the Facility, including that portion of the Facility affected by such leases, free of all charges, liens and encumbrances, including such leases, at such time as all the Bonds are no longer Outstanding or are deemed paid under Article VII hereof.

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year shall be deemed to have been adopted and be in effect for such Fiscal Year until the annual budget for such Fiscal Year is adopted and a copy thereof filed with the Trustee.

**SECTION 4.13 Completion of Project Improvements.** The Issuer shall carry out the completion of the Project with all practical dispatch and in a sound and economical manner.

**SECTION 4.14 Payment of Lawful Charges: Liens on the Project.** The Issuer shall pay from the Revenues all taxes and assessments or other municipal or governmental charges, if any, lawfully levied or assessed upon or in respect of the Project, or upon any part thereof or upon any revenue therefrom, when the same shall become due, and shall duly observe and comply with all legal requirements of any municipal or governmental authority applicable to any part of the Project. Except for Permitted Encumbrances, the Issuer shall not create or suffer to be created any lien or charge upon the Project or any part thereof or upon the Revenues therefrom, except the pledge and lien created by this Indenture for the payment of the principal and premium, if any, and interest on the Bonds. The Issuer shall pay or cause to be discharged, or will make adequate provision to satisfy and discharge, within thirty (30) days after the same shall accrue, all lawful claims and demands for labor, materials, supplies or other objects for the Project; provided, however, that nothing contained in this Section shall require the Issuer to pay or cause to be discharged, or make provision for, any such lien or charge, so long as the validity thereof shall be contested in good faith and by appropriate administrative and legal proceedings and the Project is not threatened with forfeiture or foreclosure.

**SECTION 4.15 Release and Indemnification Covenants.** The Issuer releases the College and Trustee from, and covenants and agrees that, the College and Trustee and each and every member, officer, official, employee or agent thereof, past, present and future, shall not be liable for, and covenants and agrees to defend, indemnify and hold harmless such parties, and each of them, from and against (a) any liability for loss or damage to property or any injury to or death of any person occurring at or resulting from the Project or any defect therein, the ownership thereof, the acquisition, construction or equipping thereof, or the possession, occupancy, use or operation thereof, or resulting from any act or omission of the Issuer, the Manager, or any of their agents, contractors, servants, employees, or licensees, and without limiting the foregoing, any and all actions, suits, proceedings, allegations, claims and liabilities in any way arising out of or predicated upon any of the foregoing of this Indenture or any instrument or document contemplated by the Indenture, including any expenses incurred by the College or Trustee in connection with the defense of any claim against it arising out of any such loss, damage, injury, or death; (b) any loss, damage, cost or expense (including attorneys' fees) arising out of any breach or default on the part of the Issuer in the performance of any of its obligations under this Indenture; (c) all claims arising from the negligent or intentional misconduct of the Issuer or any of its permitted assignees, lessees, sublessees or transferees, or the agents, contractors, servants, employees or licensees of any of the foregoing parties; and (d) any cost or expense (including attorneys' fees) incurred by the College or Trustee under the Indenture.

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**SECTION 4.10 Issuer's Representations as to Fair Market Value.** The Issuer hereby represents that: (a) a reasonable estimate of the fair market value of the Project on the final maturity of the Bonds, regardless of whether the Bonds are callable at an earlier date, is equal to at least twenty percent (20%) of the original cost of the property financed by the Bonds. The estimated fair market value of the Project shall be determined without including in the value any addition to the Project or increase or decrease for inflation or deflation during the term of the Bonds; and (b) a reasonable estimate of the remaining useful life of the Project on the final maturity date of the Bonds, regardless of whether the Bonds are callable at an earlier date, is the longer of one year or twenty percent (20%) of the originally estimated useful life of the Real Property financed by the Bonds; and (c) the Project was originally acquired at no more than fair market value. To the extent necessary, the Issuer will replace or rehabilitate portions of the Project while the Bonds are Outstanding so as to ensure that these representations remain true and correct on the final maturity of the Bonds.

**SECTION 4.11 No Extension of Maturity.** Any Additional Bonds or other obligations issued by the Issuer either to make improvements to the Project or for refunding purposes will provide that such obligations will be discharged no later than the maturity date of the Bonds, regardless of the fact that the Bonds may be callable at an earlier date.

**SECTION 4.12 Annual Budget.**

1. Not less than sixty (60) days prior to the beginning of each Fiscal Year beginning July 1, 2011, the Issuer shall prepare and file with the Trustee and any Holder or Beneficial Holder of ten percent (10%) or more of the principal amount of the Bonds Outstanding an annual budget for the ensuing Fiscal Year. Such annual budget shall set forth in reasonable detail on a monthly basis: the estimated Revenues and Operating Expenses for the Project for each month of such Fiscal Year; the estimated amounts to be deposited in each of the Funds and Accounts established under this Indenture; and the estimated expenditures for the replacement of capital assets or any unusual or extraordinary maintenance or repairs, for the building and constructing of permanent improvements, alterations, buildings and other structures and for taxes and insurance on the Project. The Issuer may at any time adopt an amended annual budget for the remainder of the then current Fiscal Year. Copies of the annual budget and of any amended annual budget shall be promptly filed with the Trustee for inspection by Bondholders and with any Holder of ten percent (10%) or more of the principal amount of the Bonds Outstanding.

2. The budget or amended budget to be adopted by the Issuer shall provide for minimum equal monthly deposits out of Revenues, excluding interest, into the Repair and Replacement Reserve Account of the Operation and Maintenance Fund (as such deposits may be adjusted pursuant to Section 12.12 hereof) and shall provide for the payment of all other payments required under this Indenture at the times and in the manner specified herein.

3. If for any reason the Issuer shall not have adopted the annual budget for a Fiscal Year before the first day of such Fiscal Year, the annual budget for the preceding

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Notwithstanding the fact that it is the intention of the parties that College and Trustee shall not incur pecuniary liability by reason of the terms of this Indenture, or the undertakings required of the College and Trustee hereunder, by reason of the issuance of the Bonds, by reason of the adoption of the Indenture, by reason of the performance of or failure to perform any act required of it by the Indenture, or by reason of the performance of or failure to perform any act requested of it by the Issuer, the Trustee or the Bondholders, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulations pertaining to the foregoing: nevertheless, if College or Trustee should incur any pecuniary liability, then in such event Issuer shall indemnify and hold harmless College and Trustee (including any person at any time serving as a member, officer, official, employee, or agent of the Issuer), against all claims by or on behalf of any person, firm, corporation or entity of any kind, arising out of the same (excluding those claims resulting from the College's or Trustee's willful and intentional misconduct or fraud), and all costs and expenses (including attorneys' fees) incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice from College or Trustee, Issuer shall defend College or Trustee (including any person serving at any time as a member, officer, official, employee, or agent of Issuer) in any such action or proceeding.

The release and indemnification covenants and agreements contained in this Section 4.15 shall survive the termination of this Indenture. The Issuer will provide for and insure in the public liability policies required in Section 12.07 hereof, not only its own liability in respect of the matter there mentioned but also the liability herein assumed, under a contractual endorsement, if commercially available.

**SECTION 4.16 Continuing Disclosure Covenant.**

(a) Definitions. The following terms used herein shall have the following meanings:

"Audited Financial Statements" means the annual audited financial statement as described in Section 12.09 hereof.

"Bondholders" shall mean the registered owner of any Bond and the beneficial owner (as defined in Rule 13d-3 of the SEC) of any Bond.

"MSRB" means the Municipal Securities Rulemaking Board. As of the date hereof, the MSRB's required method of filing is electronically via its Electronic Municipal Market Access (EMMA) system available on the Internet at <http://emma.msrb.org>.

"Rule" means Rule 15c2-12 promulgated by the SEC pursuant to the Securities Exchange Act of 1934, as amended.

"SEC" means the United States Securities and Exchange Commission.

"SID" means the appropriate state Information depository, if any, for the State as designated by the SEC in accordance with the Rule.

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(b) Continuing Disclosure. The Issuer hereby agrees, in accordance with the provisions of the Rule, to provide or cause to be provided the MSRB on or before the 180th day after the end of the Fiscal Year of the Issuer, the following annual financial information and operating data, commencing with the Fiscal Year ended June 30, 2011.

(1) Updates of the numerical financial information and operating data included in the following sections of the official statement of the Issuer relating to the Bonds (the "Official Statement"):

Projected Income, Expenses and Debt Service Coverage  
Annual Debt Service Requirement  
The Project  
The Manager

provided that such Information updating these tables may be provided in such format as the Issuer deems most appropriate; and

(2) The Audited Financial Statements. The Issuer may from time to time, in order to comply with federal or State legal requirements, modify the basis upon which its financial statements are prepared. Notice of any such modification shall be provided to the MSRB and shall include a reference to the specific federal or State law or regulation describing such accounting basis. Such annual financial information and operating data described above are expected to be provided directly by the Issuer, but may be provided by reference to subsequent official statements of the Issuer filed with the MSRB.

Such annual financial information and operating data described above are expected to be provided directly by the Manager, but may be provided by reference to subsequent official statements of the Issuer filed with the MSRB.

(c) Such annual information and operating data described in (b)(1) above and the Audited Financial Statements will each be available on or before the 180th day after the end of the fiscal year of the Issuer; provided, however, that if the Audited Financial Statements are not available by the 180th day after the end of the fiscal year, they shall be provided when available, and unaudited financial statements shall be filed in place of the Audited Financial Statements by such date. If the Issuer changes its fiscal year, the Issuer shall send, or cause to be sent, notice of such change to each the MSRB.

(d) Notice of Failure to Disclose. The Issuer agrees to provide or cause to be provided, in a timely manner, to the MSRB notice of a failure by the Issuer to provide the annual financial information with respect to the Issuer described in subsection (b) above on or prior to the dates set forth in subsection (b) above.

(e) Occurrence of Events. The Issuer agrees to provide or cause to be provided in a timely manner to the MSRB notice of the occurrence of any of the

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provisions of this undertaking shall be limited to a right to obtain specific enforcement of the Issuer's obligations hereunder and any failure by the Issuer to comply with the provisions of this undertaking shall not constitute a default or an event of default with respect to the Bonds or under this Indenture; and provided further, that the right of the Bondholders to challenge the adequacy of any Information supplied pursuant to this undertaking shall be limited as provided in Section 8.05 hereof.

(i) Amendments to the Undertaking. Amendments may be made in the specific types of information provided or the format of the presentation of such information to the extent deemed necessary or appropriate in the judgment of the Issuer, provided that the Issuer agrees that any such amendment will be adopted procedurally and substantively in a manner consistent with the Rule, including any interpretations thereof by the SEC, which, to the extent applicable, are incorporated herein by reference. Such Interpretations currently include the requirements that (a) the amendment may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of the Issuer or the type of activities conducted thereby, (b) the undertaking, as amended, would have complied with the requirements of the Rule at the time of the primary offering of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances, and (c) the amendment does not materially impair the interests of Bondholders, as determined by parties unaffiliated with the Issuer (such as independent legal counsel), but such Interpretations may be changed in the future, if the accounting principles to be followed by the Issuer in the preparing of the Audited Financial Statements are modified, the annual financial information for the year in which the change is made shall present a comparison between the financial statements as prepared on the prior basis and the statements as prepared on the new basis, and otherwise shall comply with the requirements of the Rule, in order to provide information to investors to enable them to evaluate the ability of the Issuer to meet its obligations. A notice of the change in accounting principles shall be sent to the MSRB.

(j) The provisions of this Undertaking, including but not limited to the provisions relating to the accounting principles pursuant to which the Issuer's financial statements are prepared, may be amended as deemed appropriate by an Authorized Officer of the Issuer; provided, however, that any such amendment must be adopted procedurally and substantively in a manner consistent with the Rule, including and interpretations thereof made from time to time by the SEC, which, to the extent applicable, are incorporated herein by reference.

(k) If a change is made to the basis on which financial statements are prepared, the annual financial information for the year in which the change is made shall present a comparison between the financial statement or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. Such comparison shall include a qualitative and, to the extent reasonably feasible, quantitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the information.

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following events listed in (b) (5) (i) (C) of the Rule with respect to the Bonds, if applicable, if material:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults;
- (3) unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions or events affecting the tax-exempt status of the Bonds;
- (7) modifications to rights of holders of the Bonds;
- (8) bond calls;
- (9) defeasances;
- (10) release, substitution, or sale of property securing repayment of the Bonds; or
- (11) rating changes.

The Issuer also agrees to provide notice to the Trustee in a timely manner of (i) material adverse changes to the Issuer or the property securing repayment of the Bonds, and (ii) major casualties or natural disasters affecting the Project.

(f) Materiality Determined Under Federal Securities Laws. The Issuer agrees that its determination of whether any event listed in subsection (e) is material shall be made in accordance with federal securities laws.

(g) Termination of Reporting Obligation. The Issuer reserves the right to terminate its obligation to provide annual financial information and notices of material events, as set forth above, if and when the Issuer no longer remains an "obligated person" with respect to the Bonds within the meaning of the Rule, including upon legal defeasance of all Bonds.

(h) Benefit of Bondholders. The Issuer agrees that its undertaking pursuant to the Rule set forth in this Section 4.16 is intended to be for the benefit of the Bondholders (including all beneficial owners of the Bonds, as defined in Rule 13d-3 of the SEC) and shall be enforceable by any Holder of the Bonds; provided that, the right to enforce the

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Notwithstanding anything that may be stated herein to the contrary, the Trustee shall be under no duty, nor shall it be required to review or examine any financial statement or report furnished to it under the Bond Documents.

## ARTICLE V

### DEPOSIT OF BOND PROCEEDS; FUNDS AND ACCOUNTS; REVENUES

**SECTION 5.01 Creation of Funds.** There are hereby created by the Issuer and ordered established the following trust funds and trust accounts to be held by the Trustee:

(a) A Bond Fund to be designated "Florida Keys College Campus Foundation, Inc. Senior Leasehold Industrial Development Revenue Bonds (Florida Keys Community College Project) Bond Fund," and within such Bond Fund,

- (i) an Interest Account;
- (ii) a Principal Account;
- (iii) an Amortization Account; and
- (iv) a Capitalized Interest Account.

(b) a Revenue Fund to be designated "Florida Keys College Campus Foundation, Inc. Senior Leasehold Industrial Development Revenue Bonds (Florida Keys Community College Project) Revenue Fund."

(c) a Permitted Cost Fund to be designated "Florida Keys College Campus Foundation, Inc. Senior Leasehold Industrial Development Revenue Bonds (Florida Keys Community College Project) Permitted Cost Fund," and within such Permitted Cost Fund.

- (i) a Construction Account;
- (ii) a Costs of Issuance Account;
- (iii) a Net Awards Account; and,
- (iv) a Developer Reserve Account.

(d) An Operation and Maintenance Fund to be designated "Florida Keys College Campus Foundation, Inc. Senior Leasehold Industrial Development Revenue Bonds (Florida Keys Community College Project) Operation and Maintenance Fund" and within such Operation and Maintenance Fund.

- (i) a Taxes and Insurance Premium Account;
- (ii) an Operating Account; and
- (iii) a Repair and Replacement Reserve Account.

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amount of \$500,000 shall be paid into the Interest Account of the Bond Fund and used to pay interest on the Bonds as it becomes due. From the date of issuance of the Bonds until the amount held in the Developer Reserve Account is disbursed as set forth above, interest earned on the Developer Reserve Account shall be paid over periodically into the Interest Account of the Bond Fund.

(i) The Capitalized Interest Account established within the Bond Fund shall be initially funded in the amount of \$506,693.00 with Bond proceeds upon issuance of the Bonds. Said amount shall be used within the Bond Fund to pay interest on the Bonds while the Facility is being constructed, and thereafter any residue in the Capitalized Interest Account shall continue to be used to pay interest on the Bonds as such interest becomes due.

**SECTION 5.02 Deposit of Bond Proceeds.** The proceeds of the sale of the Bonds shall be deposited by the Trustee as set forth in the attached Exhibit D.

#### **SECTION 5.03 Disbursements from the Permitted Cost Fund.**

(a) The Trustee shall disburse moneys in the Construction Account to or upon the order of the Issuer from time to time upon receipt of a written requisition for Project Costs executed by an Authorized Issuer Representative, by using a form of requisition in substantially the form attached hereto as Exhibit "E." All amounts on deposit in the Construction Account, including investment earnings thereon shall be used to pay Project Costs, unless in the opinion of Bond Counsel, a portion thereof may be used for other purposes specified by the Issuer without causing Interest on the Bonds to be included in gross income for federal income tax purposes or violating the Act or other applicable laws.

If, after the Trustee shall have set aside sufficient moneys for the payment of any remaining part of the Project Costs, there shall be a balance on deposit in the Construction Account, such amount shall be paid to the Issuer towards the satisfaction of the Days' Cash on Hand Requirement; or, if the Issuer shall obtain a favorable opinion of Bond Counsel, the Issuer may direct the Trustee to deposit such money into the Repair and Replacement Reserve Account of the Operation and Maintenance Fund and apply such money to payment of the cost of capital improvements to the Project, pursuant to requisition of the Issuer in the form described above.

(b) The Trustee shall disburse moneys in the Cost of Issuance Account to or upon the order of the Issuer from time to time upon receipt of a written requisition for Costs of Issuance executed by an Authorized Issuer Representative, by using a form of requisition in substantially the form attached hereto as Exhibit "E" which shall state (i) that such amount is to be paid to a person, firm or corporation identified therein, and (ii) that such amount is properly payable as a Cost of Issuance hereunder. Upon the earlier of six months after the original issuance of the Bonds or the Trustee's receipt of a written direction of the Issuer, amounts remaining in the Cost of Issuance Account shall be transferred to the Construction Account and used to pay for Project Costs.

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(e) A Rebate Fund to be designated "Florida Keys College Campus Foundation, Inc. Senior Leasehold Industrial Development Revenue Bonds (Florida Keys Community College Project) Rebate Fund."

(f) An Investment Fund to be designated "Florida Keys College Campus Foundation, Inc. Senior Leasehold Industrial Development Revenue Bonds (Florida Keys Community College Project) Investment Fund," into which a contingency amount of \$200,000 (the "Contingency Amount") shall be deposited from Bond proceeds at the time the Bonds are issued. Such Contingency Amount may be used by the Issuer (i) to cover construction cost overruns (if any) during the time that the Facility is being constructed and (ii) from time to time, after the Facility has been constructed, for working capital/operational purposes in support of the operations of the Facility. Once the Facility has been constructed, the residue (if any) of the Contingency Amount may be used to satisfy dollar-for-dollar the Days' Cash on Hand Requirement and thereafter to pay to the College's general fund the residue (if any).

(g) A Debt Service Reserve Fund to be designated "Florida Keys College Campus Foundation, Inc. Senior Leasehold Industrial Development Revenue Bonds (Florida Keys Community College Project) Debt Service Reserve Fund," into which an amount of \$671,350 shall be deposited from Bond proceeds at the time the Bonds are issued. Such amount shall be invested by the Trustee and used to pay principal and interest on the Bonds to the extent funds are otherwise unavailable therefore in the Bond Fund. If any amount of the original or replenished \$671,350 contained in the Debt Service Reserve Fund or additions to such fund as provided below must be used to make payments of principal and interest on the Bonds, such amounts shall be replenished by the Issuer as hereinafter described. Beginning on the third business day of the first month following the month that funds have been withdrawn from the Debt Service Reserve Fund and continuing for twelve (12) consecutive months, the Issuer shall make payments to the Debt Service Reserve Fund, each in an amount equal to one-twelfth (1/12) of the amount so withdrawn.

Any income earned from the investment of funds on deposit in the Debt Service Reserve Fund shall be paid into the Construction Account of the Permitted Cost Fund until the Project has been completed; after completion of the Project said income shall be retained in the Debt Service Reserve Fund until such time as the amount on deposit in such fund equals \$671,350; thereafter, said income shall be deposited into the Interest Account of the Bond Fund so long as the amount on deposit in the Debt Service Reserve Fund equals at least \$671,350.

(h) The Developer Reserve Account established within the Permitted Cost Fund shall be initially funded in the amount of \$500,000 with Bond proceeds upon issuance of the Bonds. In the event that the Facility is constructed and made legally available for occupancy by students of the College by not later than midnight on August 15, 2011, the amount in the Developer Reserve Account shall be distributed as follows: (i) \$235,000 of the Developer Reserve Account shall forthwith be paid to the Developer; and (ii) \$265,000 shall forthwith be paid to the Contractor. In the event that the Facility is not legally available for such occupancy by midnight on August 15, 2011, the entire

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(c) In paying any requisition under this Section 5.03, the Trustee shall be entitled to rely as to the completeness and accuracy of all statements in such requisition and in any document presented therewith, and may rely upon execution thereof by an Authorized Issuer Representative to be conclusive evidence of approval by the Issuer of the statements made therein. The Issuer hereby covenants and agrees to indemnify and hold harmless the Trustee from any liability incurred in connection with the payment of any requisition so executed by an Authorized Issuer Representative.

(d) For the entire life of the Bonds, the Trustee shall keep and maintain adequate records pertaining to each account and subaccount within the Permitted Cost Fund and all disbursements therefrom and upon receipt of a notice of completion of acquisition and construction of the Project, the Trustee shall, if requested by the Issuer, file an accounting thereof with the Issuer.

**SECTION 5.04 Completion of Project Improvements.** Upon completion of the Project, the Issuer will cause a certificate of completion to be issued and delivered to the Trustee.

Notwithstanding the completion of the Project, the Trustee shall maintain, for as long as there are any Bonds Outstanding, the Net Awards Account in the Permitted Cost Fund, and shall keep and maintain adequate records pertaining to such account.

#### **SECTION 5.05 Deposit of Insurance Proceeds or Condemnation Awards in Net Awards Account.**

(a) Any moneys representing Net Awards deposited with the Trustee in accordance with Section 12.08 of this Indenture, shall be deposited by the Trustee into the Net Awards Account of the Permitted Cost Fund.

(b) Unless a rebuilding, replacement, repair or restoration of the Project is not to occur as permitted by Section 12.08(d) hereof, within thirty (30) days following the deposit of Net Awards into the Net Awards Account, the Issuer shall proceed to rebuild, replace, repair or restore the Project in accordance with paragraph (c) hereof.

(c) Upon completion of any construction, repair, replacement, restoration or rebuilding of the Project, as certified in accordance with Section 5.03 hereof, the Issuer shall give notice to the Trustee of the completion of any construction, repair, replacement, restoration or rebuilding in the Project, and upon such notice, moneys remaining in the Net Awards Account shall be applied to the redemption of Bonds pursuant to the provisions of Article III of this Indenture. If no such construction, repair, replacement, restoration or rebuilding occurs, moneys remaining in the Net Awards Account shall be applied to the redemption of Bonds pursuant to the provisions of Article III and Section 12.08 of this Indenture.

(d) Any excess of amounts necessary to redeem the Bonds shall be paid to the College.

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**SECTION 5.06 Revenue Fund.** Deposits into the Revenue Fund: Use of Moneys in the Revenue Fund.

(a) The Issuer shall cause to be deposited all Revenues with the Trustee no less frequently than monthly, and the Trustee shall upon receipt deposit such amounts into the Revenue Fund to be used and transferred as is provided in this Indenture.

(b) Moneys in the Revenue Fund shall be applied pursuant to a written certificate from the Issuer at the time and in the following manner in the order of priority indicated (if any):

(i) first, on the last Business Day of each April, commencing April 29, 2011, to the extent required, amounts necessary in each year to meet the Rebate Requirement of the Rebate Fund as directed;

(ii) second, on the last Business Day of each month, commencing December 31, 2010, to the Operation and Maintenance Fund, first, to the Taxes and Insurance Premiums Account, second to the Operating Account, the amounts, including expenses of the Manager related to the operation of the Facility, assigned therefor by the budget of the Issuer, and third, to the Repair and Replacement Reserve Account of the Operation and Maintenance Fund that amount determined under the provisions of Section 4.12 of this Indenture;

(iii) third, on the last Business Day of each month, commencing December 31, 2010, to the Interest Account, an amount equal to one-sixth (one-fifth prior to the May 1, 2011, Interest Payment Date) (or such greater or lesser amount as may be needed to accumulate such amount in equal monthly installments by the last day of the month prior to such Interest Payment Date) of the amount required to pay the interest due on the Bonds on the next Interest Payment Date (less amounts already on deposit in the Interest Account for such purpose);

(iv) fourth, on the last Business Day of each month, beginning on November 30, 2012, to the Principal Account, and on a parity therewith, to the Amortization Account (and to the appropriate subaccounts therein), one-twelfth (1/12) (or such greater or lesser amount as may be needed to accumulate such amount in equal monthly installments by the last day of the month prior to the date needed) of the amount of principal payments and/or Amortization Installments for Term Bonds required by the terms of this Indenture to be deposited in such Accounts, on such Interest Payment Date less any credit (as to the Amortization Installments) for Bonds submitted to the Trustee for cancellation and credit against the Amortization Installment permitted by Section 5.07 of this Indenture;

(v) fifth, on the last Business Day of each month, commencing August 31, 2011, to the payment of (a) the actual expenses of operating the Project for the previous month, to the extent such actual expenses are in excess of budgeted amounts therefor and (b) Administration Expenses;

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(2) There shall be deposited into the Amortization Account of the Bond Fund (i) moneys transferred from the Revenue Fund, the Investment Fund, or any other available source, to pay Amortization Installments; and (ii) moneys transferred from the Construction Account pursuant to Section 5.06(c) hereof. Moneys held for the credit of the Amortization Account shall be applied to the retirement of Term Bonds as follows:

(A) Money in the appropriate subaccounts within the Amortization Account shall be applied by the Trustee to the redemption of Term Bonds on November 1 in each applicable year, and to the payment at maturity of the balance outstanding as set forth in Section 2.02 hereof.

(B) In accordance with the provisions of Section 5.06 of this Indenture, the Trustee shall deposit into the respective subaccounts within the Amortization Account from the Revenue Fund the Amortization Installment for the appropriate maturity and interest rate of Term Bonds for such date.

(C) At least thirty (30) but not more than sixty (60) days prior to November 1 of each applicable year, the Trustee shall give notice and call for redemption at the principal amount thereof plus accrued interest, if any, on such November 1. In accordance with the provisions of this Indenture, a principal amount of Term Bonds of the appropriate maturity and interest rate as shall be equal to the Amortization Installment established for such maturity and interest rate to be redeemed may be selected by lot in the manner prescribed by this Indenture.

(D) An Amortization Account and subaccounts may be established within the Bond Fund for any series of Additional Bonds by the supplemental Indenture creating such series of Additional Bonds.

The Trustee shall pay from the Bond Fund all expenses in connection with any such purchase or redemption of Bonds under this Section 5.07.

(3) Moneys deposited in the Interest Account, including any accrued or capitalized interest, shall be used to pay interest on the Bonds when due.

(4) Except as provided in this paragraph and in Sections 5.09 and 8.10 hereof, moneys in the Bond Fund shall be used solely for payment of the principal of, premium, if any, and interest on the Bonds. The Trustee shall at all times maintain accurate records of deposits into the Bond Fund, and the sources and timing of such deposits.

**SECTION 5.08 Use of Moneys in the Operation and Maintenance Fund.** Moneys in the Operation and Maintenance Fund (except as provided in the next succeeding paragraph with respect to moneys in the Repair and Replacement Reserve Account) shall be used to pay the costs of the ordinary and extraordinary operation of the Project, including repairs, replacement, utilities, cleaning, salaries, taxes, insurance, and such other expenses as are typically incurred in the operation of a student housing facility of the Project's type or required by the Indenture. All payments shall be in accordance

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(vi) sixth, repeat deposits for (i) through (v) until the amount in each account equals the amount necessary to (a) fully fund the amount of interest coming due on the Bonds on the next Interest Payment Date in such Fiscal Year; (b) the amount in the Principal Account equals the amount necessary to fully fund the principal coming due on the Bonds on the next Principal Payment Date in such Fiscal Year; and (c) the amount in the Operating Fund equals the amount necessary to fully fund the current Annual Budget for Operating Expenses.

(vii) seventh, commencing August 31, 2011, to pay the Management Fee (which is separate from and in excess of the expenses of the Manager referred to in Section 5.06(b) (ii) above), and, to the extent of available funds, to the Repair and Replacement Reserve Account, such amount as shall be budgeted therefor, as adjusted pursuant to Section 12.12 hereof; and

(viii) eighth, any remaining Revenues shall be deposited into the Investment Fund; provided that in the event that the Investment Fund contains an amount in excess of the Days' Cash on Hand Requirement, such excess may be paid to the Issuer, if there is no Event of Default outstanding, upon receipt of a certificate of the Manager delivered to the Trustee, together with audited financial statements for the operation of the Project clearly demonstrating that the following expenditures and funds are paid and/or at their required level(s): items (i) through (vii) above in this Section 5.06(b). Such excess paid to the Issuer may be used for working capital/operational purposes in support of the operations of the Facility; to pay for pre-development costs of expanding the Project such as those for land acquisition, Phase I environmental, legal, feasibility studies and/or architectural drawings; or for any other purposes, related or unrelated to the Facility, as the Issuer deems appropriate.

(c) After all Project Costs have been paid and after the Completion Date, any remaining money in the Construction Account shall be transferred to the Capitalized Interest Account of the Bond Fund and shall be used therein to pay interest on the Bonds.

(d) If there should be a shortfall or deficiency in any of the above accounts, the amount of the deficiency shall be restored from the next available moneys in the order of priority noted in addition to the payments which would otherwise be required to be made into such funds on the subsequent payment dates. Except as provided in Section 5.11, no penalty or interest shall accrue as a result of such deficiency.

**SECTION 5.07 Deposits into the Bond Fund; Use of Moneys in the Bond Fund, Bonds Accounts.**

(1) There shall be deposited in the Principal Account of the Bond Fund (i) moneys transferred from the Revenue Fund, the Investment Fund, or any other available source, to pay principal of the Bonds when due or upon maturity, and (ii) moneys transferred from the Net Awards Account or from other sources to pay the principal of the Bonds pursuant to prior redemption under Section 3.01 and 3.02 hereof. Moneys deposited in the Principal Account shall be used to pay principal of Bonds by reason of redemption or acceleration of the Bonds.

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with the budget of operations submitted annually by the Issuer to the Trustee pursuant to Section 4.12 hereof; provided that the actual expenses of operation of the Project to the extent in excess of budgeted amounts shall be paid to the extent Revenues are available for such purpose as set forth in Section 5.06 hereof.

Moneys on deposit in the Repair and Replacement Reserve Account in the Operation and Maintenance Fund shall be used only to pay the costs of major expenditures, such as roofs, appliances, HVAC, parking lots, security equipment upgrades, sidewalk and drainage projects, water heating systems, and fire alarm/safety code upgrades on or used with respect to the Project.

The Operating Account of the Operation and Maintenance Fund shall be funded from Revenues and shall be used only for the ordinary operations, repair and maintenance of the Project.

Moneys in the Taxes and Insurance Premiums Account shall be funded from Revenues and shall be used for the payment of taxes and insurance premiums on the Project, as is provided by the budget of the Issuer and shall be disbursed therefrom upon receipt by the Trustee of a written certificate executed by an Authorized Issuer Representative.

The Repair and Replacement Reserve Account and the Operating Account shall be funded from Revenues to the extent provided in the budget of the Issuer described in Section 4.12 hereof.

The Net Awards Account shall be funded from Net Awards as provided by Section 12.08 hereof and shall be used only for the purposes described in Sections 5.05(c) and 12.08 hereof; provided, however, that if such funds are to be used for the redemption of Bonds pursuant to the other provisions of this Indenture, the Trustee shall transfer appropriate amounts to the Principal Account and the Interest Account of the Bond Fund to provide sufficient moneys for such redemption.

Withdrawals from the Operating Account of the Operation and Maintenance Fund shall be made by using the Requisition Form attached hereto as Exhibit "F," and withdrawals from the Repair and Replacement Reserve Account shall be made by using the Requisition Form attached hereto as Exhibit "G." In paying any requisition under this Section 5.08, the Trustee shall be entitled to rely as to the completeness and accuracy of all statements in such requisition and in any document presented therewith, and may rely upon execution thereof by an Authorized Issuer Representative to be conclusive evidence of approval by the Issuer of the statements made therein. The Issuer hereby covenants and agrees to indemnify and hold harmless the Trustee from any liability incurred in connection with the payment of any requisition so executed by an Authorized Issuer Representative.

**SECTION 5.09 Bonds Not Presented for Payment.** If any Bonds are not presented for payment at maturity, and if moneys sufficient to pay principal and interest to the redemption date on such Bonds are held by the Trustee, the Trustee shall segregate and hold such moneys in trust, without liability for interest thereon, for the benefit of

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Owners of such Bonds who shall, except as provided in the following paragraph, thereafter be restricted exclusively to such fund or funds to satisfy any claim hereunder or relating to said Bonds. Any such unclaimed moneys which remain unclaimed for one year after such principal or interest has become due and payable shall, but only after receipt of an opinion of counsel acceptable to the Trustee to the effect that such transfer is permitted by applicable laws, be paid to the Issuer; provided, however, that before the Trustee shall be required to make any such repayment, the Trustee shall, at the expense of the Issuer, cause notice to be given to the Bondholders by registered mail to the effect that such moneys remain unclaimed and that, after a date specified in such notice, at least thirty (30) days after the date of such notice, any unclaimed balance of such moneys then remaining will be paid to the Issuer. After the payment of such unclaimed moneys to the Issuer, the liability of the Trustee with respect to such moneys shall thereupon cease.

**SECTION 5.10      Moneys Held in Trust.** All moneys held by the Trustee pursuant to this Indenture shall be held by the Trustee in trust, and such moneys shall, while so held (other than the Rebate Fund), constitute part of the Revenues and be subject to the lien hereof.

**SECTION 5.11      Payment of Management Fee.** The Trustee shall pay the Management Fee to the Manager from such moneys as are available for that use in the Revenue Fund, and in the order of priority indicated in this Indenture for the use of moneys therein; provided, however, that if at any time a payment to the Manager is to be made by reason of the Management Fee, but insufficient amounts are available in the Revenue Fund for such payment, only such amounts as are available for such purpose shall be paid to the Manager for such purpose, and the unpaid deficiency shall be carried forward to any subsequent period when a Management Fee may be payable to the Manager. Interest shall accrue on any such unpaid deficiencies at the rate of six percent (6%) per annum.

**SECTION 5.12      Acceleration of Bonds.** If the principal of the Bonds becomes due and payable pursuant to Section 8.02 hereof, the Trustee shall, upon the obtaining or entering of a judgment or decree for the payment of moneys due or as otherwise provided in Article VIII hereof, deposit first into the Bond Fund all amounts remaining, on deposit in any of the Funds and Accounts created hereunder (except the Rebate Fund which shall be held and used solely for the purposes thereof), with notice to the Issuer of such action, and use such moneys in accordance with Section 8.10 hereof.

**SECTION 5.13      Refunding of Bonds.** If any Outstanding Bonds are paid, redeemed or deemed to have been paid within the meaning of Article VII hereof by reason of the application of the proceeds of the sale of any obligations issued by the Issuer under an indenture other than this Indenture, the Trustee shall, at the written direction of the Issuer, withdraw all amounts remaining in the funds and accounts created hereunder and transfer such amounts into corresponding accounts in the construction, acquisition or other similar fund created under the indenture under which such obligations of the Issuer are issued. Such withdrawals and deposits are to be made, in accordance with the provisions of such indenture, on the date on which the Bonds are so paid, redeemed or deemed to have been paid.

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such order and priority as the Issuer may deem appropriate. Provided that all payments into the funds and accounts described in Section 5.06 (i) through (viii), including any deficiencies in past payments, have been made, any amounts on deposit in the Investment Fund on November 1 of any year may be used to complete the Improvements.

## ARTICLE VI

### INVESTMENTS

**SECTION 6.01      Investment of Funds.** All moneys held in the Funds and Accounts created under this Indenture shall, at the written direction of the Issuer, be invested and reinvested in Investment Securities, provided such investments either mature or are redeemable at not less than par at the option of the Issuer not later than the dates on which the moneys deposited there will be needed for the purpose of such Funds or Accounts.

Moneys in the Operation and Maintenance Fund, the Cost of Issuance Account and the Revenue Fund shall be held in cash or be invested in direct obligations of the United States Government maturing less than thirty (30) days from the date of purchase or invested in any investment vehicle provided by the Trustee, at the Issuer's direction, for the investment on a day-to-day basis of moneys held by the Trustee from time to time. Such investments shall be made by the Trustee as directed and designated by the Issuer, in a certificate of, or telephonic advice promptly confirmed by a certificate of the Issuer. As and when any amounts thus invested may be needed for the purposes thereof, the Trustee shall cause a sufficient amount of such investments to be sold or otherwise converted into cash to the credit of any such fund.

In the absence of direction from the Issuer, all amounts described above in this Section 6.01 shall be invested by the Trustee in those certain money market mutual funds or portfolios described in subparagraph (viii) of the definition of Investment Securities.

**SECTION 6.02      Investment Earnings.** All accrued earnings from the Investment of moneys held in any of the Funds and Accounts under this Indenture shall be credited to the Fund and Account from which moneys were obtained for such Investment and paid over to the Revenue Fund to the extent the amount therein exceeds the requirements of such Fund or Account, except as otherwise provided in Article V hereof. The Trustee shall not be responsible for failure to achieve maximum earnings or for any loss suffered in connection with the investment of funds made by it in accordance with this Indenture, unless such loss is the result of gross negligence or willful misconduct. Nor shall the Trustee be responsible for any investments hereunder meeting any yield restriction requirements as may be set forth in the Issuer's Non-Arbitrage and Tax Certificate, executed at the time of the sale and delivery of the Bonds.

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In the event of an advance refunding of all or part of the Bonds outstanding, the Trustee shall send to any Securities Depository a notice specifying: (i) the amount of refunding; and (ii) the maturity dates established under the refunding; and (iii) the date such notice is to be transmitted to Bondholders. Such notice shall be sent to such Securities Depository by a secure means (e.g., Electronic Means, registered or certified mail, overnight express delivery) in a timely manner designed to assure that such notice is in such Securities Depository's possession no later than the close of business on the Business Day before the Publication Date. The Trustee will forward such notice either in a separate secure transmission for each CUSIP number or in a secure transmission for multiple CUSIP numbers which includes a manifest or list of each CUSIP submitted in that transmission. The Issuer or Agent sending such notice shall have a method to verify subsequently the use of such means and timeliness of the notice.

**SECTION 5.14      Rebate Fund.** The Issuer shall cause the Trustee to deposit moneys into the Rebate Fund at the times and in the amounts in the manner prescribed in the Tax Certificate. Amounts on deposit in the Rebate Fund shall not be a part of the Revenues or subject to the lien of this Indenture, and are not pledged to the payment of the principal or of redemption premium, if any, or interest on the Bonds.

All amounts to be deposited (as adjusted from time to time in accordance with the Tax Certificate) into the Rebate Fund and all amounts on deposit (as adjusted from time to time in accordance with the Tax Certificate) in the Rebate Fund shall be paid to the United States Department of Treasury at the times and in the amounts required by the Tax Certificate as directed in writing by an Authorized Issuer Representative. Any excess in the Rebate Fund after the final Rebate to the United States Department of the Treasury shall be paid to the Issuer, or, if no Bonds shall remain Outstanding, to the College.

### SECTION 5.15      Application of Moneys in the Investment Fund.

(a) If on any Interest Payment Date the amount in the Interest Account, the Principal Account, or the Amortization Account shall be less than the amount of interest, principal or Amortization Installment, respectively, then due on the Bonds, the Trustee shall forthwith transfer moneys from the Investment Fund: first, to the Interest Account; and second, to the Principal Account or the Amortization Account, to the extent necessary to make good the deficiency or deficiencies.

(b) If, at any time, the Issuer determines that moneys in the Operation and Maintenance Fund are insufficient to pay for the ordinary operation of the Project, including the matters described in Section 5.08 hereof, or to the extent amounts in the Operation and Maintenance Fund are insufficient for such purpose and one or more expenditures need to be incurred for the Project which were not anticipated in the budget of the Issuer, such as extraordinary repairs or replacements with respect to the Project, then disbursements from the Investment Fund may be made by the Trustee for these purposes upon the written request of an Authorized Issuer Representative, certifying the circumstances described in this paragraph and the amounts required.

(c) Amounts on deposit in the Investment Fund may be applied by the Issuer to redeem or purchase Bonds, or to pay maturing installments of principal of Bonds in

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## ARTICLE VII

### DEFEASANCE

**SECTION 7.01      Defeasance.** If the Issuer shall cause to be paid (or there shall be otherwise paid or provision for payment made), to or for the Owners of the Bonds, the principal of, premium, if any, and interest due or to become due thereon at the times and in the manner stipulated therein, and if the Issuer shall keep, perform and observe all of its covenants and promises in the Bonds and herein, and shall cause to be paid to the Trustee all money due or to become due hereunder, then this Indenture and the lien, rights and interest created hereby shall cease, determine and become null and void (except as to any surviving rights of payment, registration, transfer or exchange of Bonds herein provided for), whereupon the Trustee shall cancel and discharge this Indenture, and release, assign and deliver unto the Issuer any and all of the right, title and interest in and to all rights assigned or pledged to the Trustee or otherwise subject to this Indenture, except moneys or securities held by the Trustee to pay the Bonds or held in the Rebate Fund.

Any Bond shall be deemed to be paid within the meaning of this Indenture when (a) payment of the principal of and premium, if any, on such Bond thereof, plus interest thereon to the due date thereof (whether such due date is by reason of maturity or upon redemption), as provided herein either (i) shall have been made or caused to be made from cash or immediately available funds in accordance with the terms hereof, or (ii) shall have been provided for by irrevocably depositing with the Trustee in trust and irrevocably setting aside exclusively for such payment (1) cash or immediately available funds sufficient to make such payment and/or (2) Defeasance Obligations, maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make such payment, without reinvestment or substitution of securities in the investment in Defeasance Obligations, (b) all necessary and proper fees, compensation and expenses of the Trustee pertaining to any such deposit shall have been paid or the payment thereof provided for to the satisfaction of the Trustee and (c) a certification from an independent certified public accounting firm confirming that the funds and or investments described above are sufficient to fully satisfy the obligations stated above. No substitutes in the securities so deposited with the Trustee, or reinvestment of the funds so deposited shall be permitted unless the Issuer shall provide an approving opinion of Bond Counsel. At such times as a Bond shall be deemed to be paid hereunder, as aforesaid, such Bond thereof shall no longer be secured by or entitled to the benefits of this Indenture (other than Sections 2.09 and 2.10 hereof, except for such payment from such moneys or Defeasance Obligations).

Notwithstanding the foregoing paragraph, no deposit under clause (a)(ii) of the immediately preceding paragraph shall be deemed a payment of such Bond as aforesaid until the Issuer shall have given the Trustee, in form satisfactory to the Trustee, irrevocable instructions to notify, as soon as is practical, the Owner of such Bond in accordance with Section 3.03 hereof, that the deposit required by clause (a)(ii) of the immediately preceding paragraph has been made with the Trustee and that said Bond or Authorized Denomination is deemed to have been paid in accordance with this Article and stating the maturity or redemption date upon which moneys are to be available for

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the payment of the principal of and the applicable premium, if any, on said Bond or Authorized Denomination thereof, plus interest thereon to the due date thereof,

Notwithstanding any provision of any other Article hereof, all moneys or Defeasance Obligations set aside and held in trust pursuant to the provisions of this Article and necessary for the payment of Bonds (including interest and premium thereon, if any) shall be applied to and used solely for the payment of the particular Bonds (including interest and premium thereon, if any) with respect to which such moneys and Defeasance Obligations have been so set aside in trust until payment of such Bonds.

Anything in Article XI hereof to the contrary notwithstanding, if moneys or Defeasance Obligations have been deposited or set aside with the Trustee pursuant to this Article for the payment of Bonds and the interest and premium, if any, thereon shall not yet have been paid in full, no amendment to the provisions of this Article shall be made without the consent of the Owner of each Bond affected thereby.

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Bonds to be immediately due and payable. Without further action, the Bonds shall become immediately due and payable. The Trustee shall give written notice of such declaration by Mail to all Owners of Outstanding Bonds, the Issuer and the College.

(b) The provisions of preceding paragraph (a), insofar as such provisions relate to the occurrence and continuance of an Event of Default described in clause (a) or (b) of Section 8.01 hereof, are subject to the condition that if, after the principal of the Bonds shall have been so declared to be due and payable, and before any judgment or decree to pay the moneys due shall have been obtained or entered as hereinafter provided, (i) the Issuer shall cause to be deposited, with the Trustee a sum sufficient to pay all matured installments of interest upon all Bonds and the principal of all Bonds which shall have become due otherwise than by reason of such declaration (with interest upon such principal and, to the extent permissible by law on overdue installments of interest, at the rate per annum specified in the Bonds) and such amount as shall be sufficient to cover reasonable compensation and reimbursement of expenses payable to the Trustee, and (ii) all Events of Default hereunder other than nonpayment of the principal of Bonds which shall have become due by said declaration, shall have been remedied, then, in every such case, such Event of Default shall be deemed waived and such declaration and its consequences rescinded and annulled, and the Trustee shall promptly give written notice of such waiver, rescission and annulment to the Issuer, and shall give notice thereof by Mail to all Owners of Outstanding Bonds. No such waiver, rescission and annulment shall extend to or affect any subsequent Event of Default or impair any right or remedy consequent thereon.

(c) Subject to the restrictions set forth in paragraph (d) below, upon the occurrence and continuance of any Event of Default, the Trustee in its discretion may (and shall, upon the written direction of the Owners of not less than twenty-five (25%) in aggregate principal amount of the Bonds then Outstanding and receipt of indemnity to its satisfaction of all costs, expenses and liability of such action, including attorneys' fees and expenses) in its own name and as the Trustee of an express trust

(i) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Bondowners, and require the Issuer to carry out any agreements with or for the Owners of the Bonds and to perform its or their duties under the Act, the Mortgage and this Indenture, provided that any such remedy may be taken only to the extent permitted under the applicable provisions of this Indenture or the Mortgage;

(ii) declare the Bonds to be immediately due and payable and/or bring suit upon the Bonds;

(iii) by action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the Owners of the Bonds;

(iv) take possession and use, operate and manage the Project or parts thereof or, subject to paragraph (d) of this Section 8.02, take action to foreclose the Mortgage and cause the Project or any part or parts thereof, to be sold to pay the indebtedness hereby secured, and execute proper conveyance to the purchasers, oath and

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## ARTICLE VIII

### DEFAULTS AND REMEDIES

**SECTION 8.01 Events of Default.** Each of the following events shall constitute and is referred to in this Indenture as an "Event of Default":

(a) A failure to pay the principal of any of the Bonds when the same shall become due and payable at maturity or upon redemption or to call Bonds for redemption pursuant to scheduled Amortization Installments as set forth herein; or

(b) A failure to pay an installment of interest on any of the Bonds when such interest has become due and payable; or

(c) The occurrence of an event of default under the Mortgage; or

(d) The occurrence of an Act of Bankruptcy; or

(e) A failure to call Bonds for redemption in the event of a Determination of Taxability in the manner required hereunder; or

(f) Except as provided below, a failure by the Issuer to observe and perform any of its covenants, conditions, agreements or provisions (other than as specified in clauses (a) through (e) above) of the Bonds or of this Indenture, which failure continues for thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Issuer by the Trustee. The Trustee may give such notice in its discretion (and shall give such notice at the written request of Owners of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then Outstanding), unless the Trustee (or the Trustee and Owners of an aggregate principal amount of Bonds not less than the aggregate principal amount of Bonds the Owners of which requested such notice), shall agree in writing to an extension of such period prior to its expiration; or

(g) The Holders of greater than fifty percent (50%) of the Bonds Outstanding shall have the option to declare an Event of Default if (i) the Debt Service Coverage Ratio falls below one hundred percent (100%) for any Fiscal Year after Fiscal Year 2012 and (ii) the College has not deposited sufficient funds to bring the Debt Service Coverage Ratio to at least one hundred percent (100%).

Upon an event described in Section 8.01(a) through (g), the Trustee shall give written notice of such insufficiency or event to the Issuer and the College. The Trustee shall be deemed to have notice of an event described in Section 8.01(c) or (g) only after receiving written notification thereof or as otherwise required by Section 9.05 hereof.

### SECTION 8.02 Acceleration; Other Remedies.

(a) Upon the occurrence and continuance of an Event of Default under (a) or (b) of Section 8.01 above, the Trustee shall, by written notice to the Issuer, declare the

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bond of the Trustee, in case of sale hereunder by the Trustee, being hereby expressly waived by the Issuer, or take other action permitted under the Mortgage, and collect the Revenues arising therefrom and dispose of such moneys in accordance with this Indenture;

(v) be entitled as of right to the appointment of a receiver of the Project or any part thereof, and the Issuer does hereby irrevocably consent to such appointment; or

(vi) take any combination of the foregoing actions.

If the Trustee shall have taken any action under this paragraph (c) of this Section 8.02, the Trustee shall give prompt notice thereof by Mail, to the Bondowners, the Issuer and the College.

(d) The provisions of the preceding paragraphs (a), (b) and (c), as they relate to accelerating the maturity of the Bonds upon the occurrence and continuation of an Event of Default hereunder, or the foreclosure of, the Mortgage, are subject to the conditions that the Trustee shall not accelerate the Bonds or take action to foreclose the Mortgage for any reason other than those set forth in paragraphs (a) or (b) of Section 8.01, above, unless it first obtains the written approval of the holders of 100% of the aggregate principal amount of Bonds then Outstanding.

(e) Upon the occurrence of an Event of Default resulting in foreclosure of the Mortgage and/or sale of the Project, the College shall be given written notice thereof and shall have the option to purchase the Project for an amount equal to the Outstanding principal amount of Bonds together with the interest accrued thereon to the date of purchase. The College (i) shall have at least ninety (90) days to exercise its option from the date it is notified by the Trustee of the Event of Default, and (ii) must purchase the Project at least ninety (90) days after it exercises its option, or its option shall expire. Any moneys received by the Trustee from the College under this paragraph (e) shall be deemed to be a recovery by the Trustee under the Mortgage for purposes of the definition of "Revenues," in such event, the maturity of the Bonds shall be accelerated and payment shall be made therefor by the Trustee as of the date of payment as aforesaid by the College, from the Revenues then available for such payment.

The Trustee's obligation set forth in this Section 8.02 are subject to the limitations set forth in Section 9.01 hereof.

**SECTION 8.03 Restoration to Former Position.** If any proceeding taken by the Trustee to enforce any right under this Indenture shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then the Issuer and the Bondowners shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

**SECTION 8.04 Owners' Right to Direct Proceedings.** Anything in this Indenture to the contrary notwithstanding, while any Bonds are Outstanding, the Owners

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of a majority in aggregate principal amount of the Bonds then Outstanding hereunder shall have the right (by an instrument in writing executed and delivered to the Trustee, and upon furnishing indemnity satisfactory to the Trustee for all costs, expenses and liability of such action including attorneys' fees and expenses) to direct the time, method and place of conducting all remedial proceedings available to the Trustee under this Indenture or exercising any trust or power conferred on the Trustee by this Indenture.

**SECTION 8.05 Limitation on Owners' Right to Institute Proceedings.**

No Owner of Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the execution of any trust or power hereunder, or any other remedy hereunder or on said Bonds, unless (a) such Owner previously shall have given to the Trustee written notice of an Event of Default as hereinabove provided, (b) Owners of not less than twenty-five (25%) in aggregate principal amount of the Bonds Outstanding request the Trustee in writing to do so after the right to institute said suit, action or proceeding under Section 8.02 hereof shall have accrued, (c) Trustee has had a reasonable opportunity to proceed to institute the same in either its or their name, (d) the Trustee is offered security and indemnity satisfactory to it against its costs, expenses and liabilities (including reasonable attorney's fees), and (e) the Trustee shall not have complied with such request within a reasonable time. Such notification, request and offer of indemnity are, at the option of the Trustee, conditions precedent to the institution of such suit, action or proceeding. The Owners shall have no right by their action to affect, disturb or prejudice the security of this Indenture or to enforce any right hereunder, except as herein provided. Suits, actions and proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all Owners.

**SECTION 8.06 No Impairment of Right to Enforce Payment.**

Notwithstanding any other provision in this Indenture, the right of any Owner of Bonds to receive payment of the principal of, premium, if any, and interest on such Bond, on or after the respective due dates expressed therein, or to institute suit for the enforcement of any such payment on or after such respective date, shall not be impaired or affected without the consent of such Owner.

**SECTION 8.07 Proceedings by Trustee Without Possession of Bonds.**

All rights of action under this Indenture or under any of the Bonds secured hereby which are enforceable by the Trustee may be enforced by it without the possession of any of the Bonds, or the production thereof at the trial or other proceedings relative thereto. Any such suit, action or proceeding instituted by the Trustee shall be brought in its name for the equal and ratable benefit of the Owners of Bonds, subject to the provisions of this Indenture.

**SECTION 8.08 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Trustee or to Owners of Bonds is intended to be exclusive of any other remedy or remedies. Each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or under the Bonds, or now or hereafter existing at law or in equity or by statute; provided, however, that any conditions set forth herein for taking any remedy to enforce the provisions of this Indenture of the Bonds,

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**ARTICLE IX**

**TRUSTEE; PAYING AGENT AND REGISTRAR**

**SECTION 9.01 Acceptance of Trusts.** The Trustee hereby accepts and agrees to execute the trusts expressly hereby created, but only upon the additional terms set forth in this Article IX, to all of which the Issuer agrees and the respective Bondowners agree by their acceptance of delivery of any of the Bonds. The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty. To the extent permitted by law, no provision of this Indenture shall be construed to relieve the Trustee from liability for its own gross negligent action, its own gross negligent failure to act, or its own willful misconduct, except that (i) the Trustee shall not be liable for any error or judgment made in good faith by any officer of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; (ii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of a majority in principal amount of Bonds Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture; (iii) no provision of this Indenture or other related bond documents shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder or under any document executed by the Trustee in connection with the Bonds, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it; and (iv) whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

**SECTION 9.02 No Responsibility for Recitals.** The recitals, statements and representations contained in this Indenture or in the Bonds, save only the Trustee's or authenticating agent's authentication upon the Bonds, shall be taken and construed as made by and on the part of the Issuer, and not by the Trustee, and the Trustee does not assume, and shall not have, any responsibility or obligation for the correctness of any thereof.

**SECTION 9.03 Limitations on Liability.** The Trustee may execute any of the trusts or powers hereof and perform the duties required of it hereunder by or through attorneys, agents, receivers or employees, and shall be entitled to advice of counsel concerning all matters of trust and its duty hereunder, and the Trustee shall not be answerable for the default or misconduct of any such attorney, agent or employee selected by it with reasonable care. Without limitation, the Trustee shall be entitled to the benefit of the foregoing sentence with respect to the delegation to the Paying Agent of any or all of the Trustee's duties hereunder, including its duties with respect to payment of principal or interest on, or redemption or remarketing of, the Bonds, the authentication and delivery thereof, and exchange and transfer thereof. The Trustee shall not be answerable for the exercise of any discretion or power under this Indenture or for

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shall also be conditions to enforcing any remedies under any of the foregoing pursuant to this Section 8.08.

**SECTION 8.09 No Waiver of Remedies.** No delay or omission of the Trustee or of any Owner of Bonds to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default, or an acquiescence therein. Every power and remedy given by this Article VIII to the Trustee and to the Owners of Bonds, respectively, may be exercised from time to time and as often as may be deemed expedient.

**SECTION 8.10 Application of Moneys.** Any moneys received by the Trustee, or by any Owner of Bonds, pursuant to any right given or action taken under the provisions of this Article VIII, shall be deposited into the Revenue Fund. All moneys so deposited into the Revenue Fund during the continuance of an Event of Default (other than moneys for the payment of Bonds which had matured or otherwise become payable prior to such Event of Default or for the payment of interest due prior to such Event of Default) shall be applied as follows:

FIRST, to pay the costs and expenses (including reasonable attorneys' fees) of the collection proceedings and the Trustee's expenses, liabilities and advances; SECOND, to unpaid interest on the Bonds, with interest to the extent permitted by law on overdue interest and principal at the rate borne by the Bonds; THIRD, to the principal of the Bonds which have been declared due and payable: all without preference or priority of any Bond over any other Bond, ratably, without discrimination or privilege; FOURTH, to the College.

Whenever moneys are to be applied pursuant to the provisions of this Section 8.10, such moneys shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall fix the date (which shall be an Interest Payment Date) upon which such application is to be made and upon such date interest on the amounts of principal and interest to be paid on such date shall cease to accrue. The Trustee shall give notice of the deposit with it of any such moneys and of the fixing of any such date by Mail to all Owners of Outstanding Bonds and shall not be required to make payment to any Owner of Bonds until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

**SECTION 8.11 Severability of Remedies.** It is the purpose and intention of this Article VIII to provide rights and remedies to the Trustee and the Owners of Bonds which may be lawfully granted under the provisions of law, but should any right or remedy herein granted be held to be unlawful, the Trustee and the Owners of the Bonds shall be entitled, as set forth above, to every other right and remedy provided in this Indenture, so long as such right is provided by law.

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anything whatsoever in connection with the trust created hereby, except only for its own gross negligence or willful misconduct.

**SECTION 9.04 Compensation. Expenses and Advances.** The Trustee, the Registrar and the Paying Agent, pursuant to the terms of this Indenture, shall be entitled to reasonable compensation for their services rendered hereunder (not limited by any provision of law in regard to the compensation of the trustee of an express trust) and to reimbursement for their actual out-of-pocket expenses (including reasonable counsel fees) reasonably incurred in connection therewith except as a result of their negligence (to the extent permitted by law) or willful misconduct as determined by a court of competent jurisdiction.

Notwithstanding any provision herein, the Trustee, in its capacity as Trustee, Paying Agent, and Registrar, shall have a first-priority lien in all moneys or other assets which secure the payment of the Bonds to secure the payment of its fees and charges as Trustee, Paying Agent and Registrar incurred following the occurrence of an Event of Default hereunder.

**SECTION 9.05 Notice of Events of Default.** The Trustee shall not be required to take notice, or be deemed to have notice, of any Event of Default described in Section 8.01 hereof, unless an officer, agent or employee responsible for matters relating to the Bonds shall have actual knowledge of such default or Event of Default, or the Trustee shall have been specifically notified in writing of such default or Event of Default by Owners of at least fifty percent (50%) in aggregate principal amount of the Bonds then Outstanding. The Trustee may, however at any time, in its discretion, require of the Issuer full information and advice as to the performance of any of the covenants, conditions and agreements contained herein.

**SECTION 9.06 Action by Trustee.** The Trustee shall be under no obligation to take any discretionary action in respect of any default or Event of Default hereunder or toward the execution or enforcement of any of the trusts hereby created, or to institute, appear in or defend any suit or other proceeding in connection therewith the undertaking of which is discretionary with the Trustee hereunder, unless requested in writing so to do by Owners of at least twenty-five (25%) in aggregate principal amount of the Bonds then Outstanding and, if in its opinion such action may involve it in expense (including attorneys' fees) or liability, unless furnished, from time to time as often as it may require, with security and indemnity as to fees, expenses and liability satisfactory to it: but the foregoing provisions are intended only for the protection of the Trustee, and shall not affect any discretion or power given to the Trustee by any provisions of this Indenture to take action in respect of any Event of Default without such notice or request from the Owners of Bonds, or without such security or indemnity.

In the event of a default, the Trustee may, in its sole discretion, after being indemnified by the Bondholders, inspect, review and monitor, or require the inspection, review and monitoring of any and all property subject to this Indenture for the purpose of determining compliance with any law, rule or regulation affecting such property. All expenses of such inspection, review and monitoring shall be paid by the Issuer or the Bondholders.

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**SECTION 9.07 Good Faith Reliance.** The Trustee, the Registrar and the Paying Agent shall be protected and shall incur no liability in acting or proceeding in good faith upon any resolution, notice, telegram, telex or facsimile transmission, request, consent, waiver, certificate, statement, affidavit, voucher, bond, requisition or other paper or document or telephonic communication which it or they shall in good faith believe to be genuine and to have been passed or signed by the proper board, body or person or to have been prepared and furnished pursuant to any of the provisions of this Indenture or upon the written opinion of any attorney, engineer, accountant or other expert believed by the Trustee, the Registrar or the Paying Agent, as the case may be, to be qualified in relation to the subject matter and the Trustee, the Registrar or the Paying Agent shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements.

**SECTION 9.08 Dealings in Bonds and with the Issuer.** The Trustee, the Registrar and the Paying Agent in its or their individual capacity or capacities, may in good faith buy, sell, own, hold and deal in any of the Bonds issued hereunder, and may join in any action which any Owner of Bonds may be entitled to take with like effect as if it did not act in any capacity hereunder. The Trustee, the Registrar or the Paying Agent, in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer and may act as depository, trustee or agent for any committee or body of Owners of Bonds secured hereby or other obligations of the Issuer as freely as if it did not act in any capacity hereunder.

**SECTION 9.09 Allowance of Interest.** The Trustee may, but shall not be obligated to, allow and credit interest upon any moneys which it may at any time receive under any of the provisions of this Indenture, at such rate, if any, as it customarily allows upon similar funds of similar size and under similar conditions, provided that such allowance and credit shall not result in any violation of Section 4.06 hereof relating to arbitrage. All interest allowed on any such moneys shall be credited to the appropriate fund or otherwise applied as provided in Article VI with respect to interest on Investments. Funds held by the Trustee hereunder shall be segregated from other funds held by the Trustee except to the extent required by law. Moneys in the Rebate Fund shall be segregated by the Trustee from other funds held by the Trustee hereunder.

**SECTION 9.10 Resignation of Trustee.** The Trustee may resign and be discharged of the trusts created by this Indenture by executing an Instrument in writing resigning such trust and specifying the date when such resignation shall take effect, and sending the same by Mail to the Issuer and the Bondholders, not less than sixty (60) days before the date specified in such instrument when such resignation shall take effect. Such resignation shall take effect on the day specified in such installment and notice, unless previously a successor Trustee shall have been appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor Trustee; provided, however, that no resignation shall take effect hereunder unless and until a successor Trustee is in place.

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**SECTION 9.15 Acceptance of Trusts by Successor Trustee.** Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Issuer an instrument accepting such appointment hereunder, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become duly vested with all the estates, property, rights, powers, trusts, duties and obligations of its predecessor in the trust hereunder, with like effect as if originally named Trustee herein. Upon request of such Trustee, such predecessor Trustee and the Issuer shall execute and deliver an instrument transferring to such successor Trustee the trust estate of such predecessor Trustee and subject to the provisions of Section 9.04 hereof, such predecessor Trustee shall pay over to the successor Trustee all moneys and other assets at the time held by it hereunder which constitute the trust estate.

**SECTION 9.16 Successor by Merger or Consolidation.** Any corporation into which any Trustee hereunder may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or any acquisition to which any Trustee hereunder shall be a party, shall be the successor Trustee under the Indenture, without the execution or filing of any paper or any further act on the part of the parties hereto, anything in this Indenture to the contrary notwithstanding.

**SECTION 9.17 Standard of Care.** The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied agreement or obligations shall be read into this Indenture against the Trustee. In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of skill and care in their exercise as would a prudent institutional fiduciary.

**SECTION 9.18 Intervention in Litigation of the Issuer.** The Trustee may intervene on behalf of the Owners of the Bonds in any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of the Owners of the Bonds provided, however, that the Trustee shall not so intervene unless it shall have received indemnity to its satisfaction:

**SECTION 9.19 Paying Agent.** Notwithstanding the requirements of Section 9.20 hereof, the Trustee shall initially serve as the Paying Agent for the Bonds. The Trustee signifies by its signature hereto its acceptance of the duties and obligations imposed upon it as Paying Agent hereunder (and any successor Paying Agent shall signify its acceptance of the duties and obligations imposed upon it under this indenture by a written instrument of acceptance delivered to the Issuer) and the Trustee, as Paying Agent, hereby agrees, particularly:

(a) to hold all sums held by it for the payment of the principal or of interest on Bonds in trust for the benefit of the Owners of Bonds until such sums shall be paid to such Owners or otherwise disposed of as herein provided.

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**SECTION 9.11 Removal of Trustee.** The Trustee may be removed for cause by the Issuer by an instrument or instruments in writing consenting to the appointment by the Issuer of a successor and accompanied by an instrument of appointment by the Issuer of such successor, and in any event by delivery to the Trustee, of an instrument or concurrent instruments in writing executed by Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding.

**SECTION 9.12 Appointment of Successor Trustee.** If at any time the Trustee shall be removed, or be dissolved, or if its property or affairs shall be taken under the control of any state or federal court or administrative body because of insolvency or bankruptcy, or for any other reason, then a vacancy shall forthwith and ipso facto exist in the office of Trustee and a successor may be appointed, and if at any time the Trustee shall resign, then a successor may be appointed, by filing with the Issuer an instrument or concurrent instruments in writing, executed by the holders of greater than fifty percent (50%) of the aggregate principal amount of the Bonds Outstanding. Copies of such instruments shall be promptly delivered by the Issuer to the predecessor Trustee and to the Trustee so appointed.

Until a successor Trustee shall be appointed by the Bondowners as herein authorized, the Issuer, by an instrument authorized by resolution of the governing body of the Issuer, shall appoint a successor Trustee acceptable to the Issuer. After any appointment by the Issuer, it shall cause notice of such appointment to be given to the Registrar other than the Trustee and any Paying Agent other than the Trustee, and shall be given by Mail to all Owners of Bonds. Any new Trustee so appointed by the Issuer shall immediately and without further act be superseded by a Trustee appointed by the Owners of the Bonds in the manner above provided.

**SECTION 9.13 Qualifications of Successor Trustee.** Every successor Trustee (a) shall be a commercial bank or trust company duly organized under the laws of the United States or any state or territory thereof, authorized by law to perform all the duties imposed upon it by this Indenture, (b) be subject to examination by a federal or state authority, and (c) shall be qualified under the laws of the State to perform the duties of Trustee.

**SECTION 9.14 Judicial Appointment of Successor Trustee.** If at any time the Trustee shall resign and no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article IX prior to the date specified in the notice of resignation as the date when such resignation is to take effect, the resigning Trustee may forthwith apply to a court of competent jurisdiction for the appointment of a successor Trustee. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Article VIII within sixty (60) days after a vacancy shall have occurred in the office of Trustee, any Owner of Bonds may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor Trustee. The Trustee shall be reimbursed for its costs and expenses (including attorneys' fees) associated with seeking the appointment of a successor trustee with the court.

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(b) to keep such books and records as shall be consistent with prudent industry practice, to make such books and records available for inspection by the Issuer, the Trustee at all reasonable times, and

(c) upon the request of the Trustee (if the Trustee is not serving as Paying Agent), to forthwith deliver to the Trustee all sums so held in trust by the Paying Agent.

The Issuer shall cooperate with the Trustee to cause the necessary arrangements to be made and to be thereafter continued whereby funds derived from the sources specified in Section 5.07 hereof will be made available for the payment when due of the principal of and interest on the Bonds.

**SECTION 9.20 Qualifications of Paying Agent; Resignation; Removal.** Any successor Paying Agent appointed hereunder shall be a commercial bank or trust company duly organized under the laws of the United States of America or any state or territory thereof, which is subject to examination by a federal or state authority, and authorized by law to perform all the duties imposed upon it by this Indenture. The Paying Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least sixty (60) days' notice to the Issuer and the Trustee. The Paying Agent may be removed at any time by the Issuer by an instrument, signed by the Issuer, which is filed with the Paying Agent and the Trustee.

In the event of the resignation or removal of the Paying Agent, the Paying Agent shall pay over, assign and deliver any moneys held by it in such capacity to its successor or, if there be no successor as Paying Agent, the Trustee shall ipso facto be deemed to be the Paying Agent for all purposes of this Indenture until the appointment by the Issuer of the Paying Agent or the successor Paying Agent, as the case may be.

If the Issuer shall fail to appoint a Paying Agent hereunder, or if the Paying Agent shall resign or be removed, or be dissolved, or if the property or affairs of the Paying Agent shall be taken under the control of any state or Federal court or administrative body because of bankruptcy or insolvency, or for any other reason, and the Issuer shall not have appointed its successor as Paying Agent, the Trustee shall ipso facto be deemed to be the Paying Agent for all purposes of this Indenture until the appointment by the Issuer of the Paying Agent or successor Paying Agent, as the case may be.

**SECTION 9.21 Registrar.** The Trustee shall serve as Registrar for the Bonds. The Trustee by its signature hereto signifies its acceptance of the duties imposed upon it as Registrar hereunder (and any successor Registrar shall signify its acceptance of the duties imposed upon it by this Indenture by a written instrument of acceptance delivered to the issuer) and the Trustee hereby agrees, particularly, to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the Issuer at all reasonable times.

The Issuer shall cooperate with the Trustee to cause the necessary arrangements to be made and to be thereafter continued whereby Bonds, executed by the Issuer and authenticated by the Trustee or any authenticating agent, shall be made available for

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exchange, registration and registration of transfer at the Principal Office of the Registrar. The Issuer shall cooperate with the Trustee and the Registrar to cause the necessary arrangements to be made and thereafter continued whereby the Paying Agent shall be furnished such records and other information, at such times, as shall be required to enable the Paying Agent to perform the duties and obligations imposed upon them hereunder.

**SECTION 9.22 Qualifications of Registrar: Resignation: Removal.** The Registrar, initially, shall be the Trustee. Any successor appointed hereunder shall be a corporation duly organized under the laws of the United States of America or any state or territory thereof, and authorized by law to perform all the duties imposed upon it by this Indenture. The Registrar may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least sixty (60) days' notice to the Issuer and the Trustee. The Registrar may be removed at any time, at the direction of the Issuer by an Instrument, signed by the Issuer, filed with the Trustee, the Registrar and the Paying Agent.

In the event of the resignation or removal of the Registrar, the Registrar shall deliver any Bonds held by it in such capacity to its successor or, if there be no successor, to the Trustee.

If Issuer shall fail to appoint a Registrar hereunder, or if the Registrar shall resign or be removed, or be dissolved, or if the property or affairs of the Registrar shall be taken under the control of any state or federal court or administrative body because of bankruptcy or Insolvency, or for any other reason, and the Issuer shall not have appointed its successor as Registrar, the Trustee shall Ipso-facto be deemed to be the Registrar for all purposes of this Indenture until the appointment by the Issuer of the Registrar or successor Registrar, as the case may be.

**SECTION 9.23 Several Capacities.** Anything in this Indenture to the contrary notwithstanding, the same entity may serve hereunder as the Trustee, the Registrar, the Paying Agent and the authenticating agent and in any other combination of such capacities, to the extent permitted by law.

**SECTION 9.24 Appointment of Co-Trustee.** It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including without limitation, the laws of the State) denying or restricting the right of banks or trust companies to transact business as trustees in that jurisdiction. It is recognized that, (a) if there is litigation under the Indenture or other instruments or documents relating to the Bonds and the Project, and in particular, in case of the enforcement hereof or thereof upon a default or an Event of Default, or (b) if the Trustee should deem that, by reason of any present or future law of any jurisdiction, it may not (i) exercise any of the powers, rights or remedies granted herein to the Trustee, (ii) hold title to the properties, in trust, as granted herein, or (iii) take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an individual or additional institution as a Co-Trustee. The following provisions of this Section are adapted to these ends.

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## ARTICLE X

### CERTAIN MATTERS REGARDING THE EXECUTION OF INSTRUMENTS BY OWNERS AND PROOF OF OWNERSHIP OF BONDS

**SECTION 10.01 Execution of Instruments; Proof of Ownership.** Any request, direction, consent or other instrument in writing required or permitted by this Indenture to be signed or executed by Owners of Bonds or on their behalf by an attorney-in-fact may be in any number of concurrent instruments of similar tenor and may be signed or executed by such Owners in person or by an agent or attorney-in-fact appointed by an instrument in writing or as provided in the Bonds. Proof of the execution of any such instrument and of the ownership of Bonds shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee with regard to any action taken by it under such instrument if made in the following manner:

(a) The fact and date of the execution by any person of any such instrument may be proved in any reasonable manner acceptable to the Trustee by the certificate of any officer in any jurisdiction who, by the laws thereof, has power to take acknowledgments within such jurisdiction, to the effect that the person signing such instrument acknowledged before him the execution thereof, or by an affidavit of a witness to such execution.

(b) The ownership of Bonds shall be proved by the registration books kept under the provisions of Section 2.10 hereof.

Nothing contained in this Article X shall be construed as limiting the Trustee to such proof, it being intended that the Trustee may accept any other evidence of matters herein stated which it may deem sufficient. Any request, consent of, or assignment by any Owner of Bonds shall bind every future Owner of the same Bond or any Bond or Bonds issued in lieu thereof in respect of anything done by the Trustee or the Issuer in pursuance of such request or consent.

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In the event that the Trustee appoints an individual or additional institution as a Co-Trustee, each and every trust, property, remedy, power, right, duty, obligation, discretion, privilege, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by, vested in or conveyed to the Trustee shall be exercisable by, vest in and be conveyed to that Co-Trustee, but only to the extent necessary for it to be so vested and conveyed and to enable that Co-Trustee to exercise it. Every covenant, agreement and obligation necessary to the exercise thereof by that Co-Trustee shall run to and be enforceable by it.

This Article IX of this Indenture is hereby made applicable to any Co-Trustee appointed hereunder.

Should any instrument or document in writing from the Issuer reasonably be required by any Co-Trustee for vesting and conveying more fully and certainly in and to that Co-Trustee those trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens, that instrument or document shall be executed, acknowledged and delivered, but not prepared, by the Issuer. Any Co-Trustee may resign or be removed and a successor Co-Trustee appointed upon the same terms as provided for the Trustee.

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## ARTICLE XI

### MODIFICATION OF THIS INDENTURE AND THE AGREEMENT

**SECTION 11.01 Limitations.** This Indenture shall not be modified or amended in any respect subsequent to the first delivery of fully executed and authenticated Bonds except as provided in and in accordance with and subject to the provisions of this Article XI and Section 2.12 hereof.

**SECTION 11.02 Supplemental Indentures Without Owner Consent.** The Issuer and the Trustee may, from time to time and at any time, without the consent of or notice to the Owners of the Bonds, enter into Supplemental Indentures as follows:

- (a) to cure any formal defect, omission, inconsistency or ambiguity in this Indenture;
- (b) to grant to or confer or impose upon the Trustee, the Registrar or the Paying Agent for the benefit of the Owners of the Bonds any additional rights, remedies, powers, authority, security, liabilities or duties which may lawfully be granted, conferred or imposed, and which are not contrary to or inconsistent with this Indenture as theretofore in effect, provided that no such additional liabilities or duties shall be imposed upon the Trustee, the Registrar or the Paying Agent without their respective consents;
- (c) to add to the covenants and agreements of, and limitations and restrictions upon the Issuer in this Indenture, other covenants, agreements, limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with this Indenture as theretofore in effect;
- (d) to confirm, as further assurance, any pledge under, and the subjection to any claim, lien or pledge created or to be created by, this Indenture, of the Revenues of the Issuer or of any other moneys, securities or funds;
- (e) to comply with the requirements of the Trust Indenture Act of 1939, as from time to time amended;
- (f) to provide for the Issuance of Additional Bonds and in connection therewith make such modifications or amendments which shall not materially adversely affect the interests of the holders of any Bonds remaining outstanding after the issuance of such Additional Bonds;
- (g) to secure or maintain a rating by a Rating Agency on the Bonds;
- (h) to prevent the interest on the Bonds from being included in gross income for Federal income tax purposes; or
- (i) to provide for different or mechanical and operational requirements of a book entry system.

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Before the Issuer and the Trustee shall enter into any Supplemental Indenture pursuant to this Section 11.02, notice of the proposed Supplemental Indenture shall have been given to the Trustee not less than ten (10) Business Days prior to the execution of any such Supplemental Indenture, and there shall have been delivered to the Trustee an opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture and the Act, complies with their respective terms, will, upon the execution and delivery thereof, be valid and binding upon the Issuer in accordance with its terms and will not cause the interest on the Bonds to be included in gross income for Federal income tax purposes.

**SECTION 11.03 Supplemental Indentures Requiring Bondholder Consent.**

(a) Except for any Supplemental Indenture entered into pursuant to Section 11.02 hereof, subject to the terms and provisions contained in this Section 11.03 and not otherwise. Owners of not less than sixty percent (60%) in aggregate principal amount of the applicable series of Bonds then Outstanding shall have the right from time to time to consent to and approve the execution and delivery by the Issuer and the Trustee of any Supplemental Indenture deemed necessary or desirable by the Issuer for the purposes of modifying, altering, amending, supplementing or rescinding, in any of the particular terms or provisions contained in this Indenture applying to such series of Bonds; provided, however, that, unless approved in writing by the Owners of all the Bonds then Outstanding, nothing herein contained shall permit, or be construed as permitted, (i) a change in the times, amounts or, currency of payment of the principal of or Interest on any Outstanding Bond, or a reduction in the principal amount or redemption price of any Outstanding Bond or the rate of Interest thereon, or (ii) the creation of a claim or lien upon, or a pledge of, the Revenues of the Issuer ranking prior to or on a parity with the claim, lien or pledge created by this Indenture with respect to such Series (except as referred to in Section 9.04 hereof, or except for a Supplemental Indenture executed in connection with the issuance of Additional Bonds as permitted hereunder) or (iii) grant of a preference or priority of any Bond or Bonds over any other Bond or Bonds.

(b) If at any time the Issuer shall request the Trustee to enter into any Supplemental Indenture for any of the purposes of this Section 11.03, the Trustee shall cause notice of the proposed Supplemental Indenture to be given by Mail to all Owners of affected Outstanding Bonds. Such notice shall enclose a copy of the Supplemental Indenture, or shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that a copy thereof is on file at the office of the Trustee for inspection by all Owners of Outstanding Bonds.

(c) Within two weeks after the date of the first giving of such notice by Mail, the Issuer and the Trustee may enter into such Supplemental Indenture in substantially the form described in such notice, but only if there shall have first been delivered to the Trustee (i) the required consents, in writing, of Owners of Outstanding Bonds and (ii) an opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture and the Act, complies with their respective terms and, upon the execution and delivery thereof, will be valid and binding upon the Issuer in

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**SECTION 11.04 Effect of Supplemental Indenture.** Upon the execution and delivery of any Supplemental Indenture pursuant to the provisions of this Article XI, this Indenture shall be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Issuer, the Trustee and all Owners of Outstanding Bonds shall thereafter be determined, exercised and enforced under this Indenture subject in all respects to such modifications and amendments.

**SECTION 11.05 Amendments to Mortgage.** With the consent of not less than fifty percent (50%) in aggregate principal amount of the Bonds then Outstanding, the Trustee may consent to an amendment of the terms of the Mortgage; provided, however, any amendment which materially adversely affects the Interests of the holders of the Bonds shall not become effective without the consent of one hundred percent (100%) of the aggregate principal amount of Bonds then Outstanding; and provided, further, no amendment to the Mortgage shall be made which adversely affects the interests of the College to receive or acquire title to the Project as set forth herein or impose any additional burden upon the title to the Project, unless the Trustee shall have received an opinion of Bond Counsel to the effect that such amendment will not adversely affect the tax exempt status of the Interest on the Bonds for federal income tax purposes.

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accordance with its terms and will not cause the interest on the Bonds to be included in gross income for Federal income tax purposes.

(d) If Owners of Bonds of not less than the percentage of Bonds required by this Section 11.03 shall have consented to and approved the execution and delivery thereof as herein provided, no Owner of Bonds shall have any right to object to the execution and delivery of such Supplemental Indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution and delivery thereof, or to enjoin or restrain the Issuer or the Trustee from executing and delivering the same or from taking any action pursuant to the provisions thereof.

(e) Subject to the terms and provisions contained in this Section 11.03(e), the Owners of all the Bonds at any time Outstanding shall have the right, and the Issuer and the Trustee by their execution and delivery of this Indenture hereby expressly confer upon such Owners the right, to modify, alter, amend or supplement this Indenture in any respect, including the matters described in clauses (i), (ii) and (iii) of the proviso contained in subsection (a) of this Section 11.03, by delivering to the Issuer and the Trustee a written instrument or Instruments, executed by or on behalf of such Owners, containing a form of Supplemental Indenture which sets forth such modifications, alternations, amendments and supplements, and, upon the expiration of a thirty (30) day period commencing on the date of such delivery during which no notice of objection shall have been delivered by the Issuer or the Trustee to such Owners at an address specified in such written instrument, such Supplemental Indenture shall be deemed to have been approved and confirmed by the Issuer and the Trustee, to the same extent as if actually executed and delivered by the Issuer and the Trustee, and such Supplemental Indenture shall thereupon become and be for all purposes in full force and effect without further action by the Issuer or the Trustee.

(f) The foregoing provisions are, however, subject to the following conditions:

(i) no such Supplemental Indenture shall in any way affect the limited nature of the obligations of the Issuer under this Indenture as set forth in Section 2.05 and 4.01 and 4.06 hereof or shall in any way prejudice the rights of the Issuer or the College hereunder:

(ii) no such Supplemental Indenture shall be to the prejudice of the Trustee, the Registrar or the Paying Agent: and

(iii) there shall have been delivered to the Issuer and the Trustee an opinion of Bond Counsel stating that such Supplemental Indenture is authorized or permitted by this Indenture and the Act, complies with their respective terms, will, upon the expiration of the aforesaid thirty (30) day period, be valid and binding upon the Issuer in accordance with its terms and will not cause the interest on the Bonds to be included in gross income for Federal income tax purposes.

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**ARTICLE XII**

**ISSUER'S COVENANTS AS TO THE OPERATION OF THE PROJECT**

**SECTION 12.01 Rate Covenant and Days' Cash on Hand.**

(a) **Rate Covenant.** The Issuer shall fix the charges for the operation of the Facility at rates that it shall find to be necessary in order to produce revenues in each Fiscal Year which, together with all other available moneys, revenue, income and receipts of the Issuer constituting Revenues (i) will equal at least 120% of the amount necessary to pay, as the same shall become due, the principal, premium, if any, and interest due in such year on the Bonds after setting aside an amount necessary to pay those costs described in clauses (i) and (ii) of Section 5.06(b) of this Indenture for such year (being any required deposit to the Rebate Fund, and the deposits to the Operating and Maintenance Fund required by the Budget of the Issuer for such period, exclusive of the amounts required to be paid to the Repair and Replacement Reserve Account) (said percentage being the "Debt Service Coverage Ratio") and (ii) will equal a Debt Service Coverage Ratio of at least 105% of the maximum debt service requirement coming due in such year with respect to the Bonds, after setting aside an amount necessary to pay those costs described in clauses (i) through (vii) of Section 5.06(b) of this Indenture for such year (being any required deposit to the Rebate Fund, all of the expenses of operating and maintaining the Project for such year, and debt service on the Bonds for such year); provided that a failure to comply with the provisions of this clause (ii) shall not constitute a default hereunder or in anywise affect the provisions hereof with respect to the Bonds. Such charges shall be increased to the extent necessary to also produce Revenues sufficient to provide for all other payments required under this Indenture.

(b) **Days' Cash on Hand.** The Issuer agrees to have, as of the beginning of each fiscal quarter, beginning with such quarter starting on November 1, 2012, not less than ninety (90) Days' Cash on Hand. If Days' Cash on Hand, as calculated at the end of any two (2) consecutive fiscal quarters, shall be less than the required level, the Issuer agrees to retain a Management Consultant, within sixty (60) days following the end of the second of such fiscal quarters, to evaluate the management of the Facility and to make recommendations with regard to increasing Days' Cash on Hand for subsequent fiscal quarters of the Issuer to at least the level required or, if in the opinion of the Management Consultant the attainment of such level is impracticable, to the highest practicable level. So long as the Issuer shall retain a Management Consultant and shall have, for each fiscal quarter, not less than seventy percent (70%) of the Days' Cash on Hand otherwise required by this paragraph, the requirements of this paragraph shall be deemed to have been satisfied.

**SECTION 12.02 Operation Not-For-Profit.** The Issuer shall manage and operate the Facility in an efficient manner so as to enable it to fix the charges for the Facility at affordable rates consistent with its providing decent, safe, sanitary and secure housing under Section 12.01 of this Indenture, and the Issuer shall not construct or operate such Facility as a source of revenue for any private individual. The Issuer shall operate the Facility, at all times in such a fashion that the corporate income of the Issuer does not inure to any private person.

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### SECTION 12.03 Management of Project.

Management Agreement. The Project shall at all times be managed by the Manager, which shall be qualified to operate and maintain student housing facilities such as the Project, under the terms of a Management Agreement in form and content approved by the Issuer, and approved by Bond Counsel as to compliance with the Code.

The Issuer shall not consent to any material changes in the Management Agreement unless an opinion of Bond Counsel is first provided to the Trustee to the effect that any such change is authorized by the Act, by federal and State law, and does not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Bonds.

**SECTION 12.04 Building Codes and Regulations.** The Issuer shall exercise reasonable care to prevent a violation, by act or omission, of the applicable building codes, permits and licenses and other applicable regulations concerning the Project. If such a violation shall occur, the Issuer shall use its best efforts to collect the same immediately.

**SECTION 12.05 Personal Property.** The Issuer agrees that all of the furnishings, fixtures, building supplies, materials and equipment utilized and to be utilized in the construction and operation of the Project, including all additions thereto and replacements thereof (all of the foregoing herein referred to as the "Personal Property"), shall be owned by Issuer and shall not, without the prior written consent of the Trustee, be the subject matter of any lease or other transaction whereby the ownership of any said property shall be held by any person or entity other than Issuer, nor shall the Issuer create or cause to be created any security interest covering any of the Personal Property.

**SECTION 12.06 Liens and Encumbrances.** Except as provided in the Mortgage or in Section 12.10 herein, the Issuer shall not create, incur, assume or permit to exist any Lien upon or on any of the Real Property or Improvements now owned or hereafter acquired, or any related income or profits other than (a) Liens for taxes, assessments or governmental charges not yet due and payable; (b) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance or social security obligations; (c) construction, workmen's, materialmen's, landlord's, carrier's or other similar liens arising in the ordinary course of business with respect to obligations which are not due or which are being contested and which are subordinate to the lien of the Mortgage; and (d) Liens in favor of the Trustee.

**SECTION 12.07 Maintenance of Insurance.** The Issuer shall maintain such insurance policies with such insurance carriers with respect to the Project as is provided in the Mortgage.

The Trustee shall have no responsibility with respect to any insurance required under this Section 12.07, except that the Trustee shall receive the letters, opinions, certificates and documents required to be delivered in accordance with this Indenture and

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mandatory redemption in an aggregate principal amount equivalent to the amounts deposited in the Net Awards Account, pursuant to the provisions of Article III hereof, and the Trustee shall so call such Bonds for redemption. Such Bonds shall be called in the order of priority set forth in Section 8.10 hereof. Any excess of such proceeds shall be paid to the College.

(e) As used in this Section, the terms "repair" and "replace" include (without limitation) the construction or acquisition of replacement or substitute property, structures, machinery, equipment or other improvements having a fair market value (but not necessarily the same function) at least equal to the fair market value immediately prior to such loss, damage, destruction or taking of the property lost, damaged, destroyed or taken.

(f) The Issuer shall adjust losses and the Issuer shall cause the Manager to adjust losses under property insurance policies related to the Real Property, in conformity with this Indenture, as promptly as practicable and with due regard to the interests of the Trustee and the Owners of the Bonds. Any adjustment of any loss, damage or destruction in an amount in excess of \$20,000 under any policy of casualty insurance and any settlement or payment of indemnity in an amount in excess of \$20,000 under any such policy shall be evidenced by an appropriate certificate, filed with the Trustee, signed by an authorized officer of the Issuer. In the event of any adjustment of loss, damage or destruction in an amount in excess of \$500,000, or any settlement or payment of indemnity in an amount in excess of \$500,000, such certificate shall be accompanied by the written acknowledgment of the Issuer and the Trustee.

**SECTION 12.09 Access and Reporting.** The Issuer shall permit the representatives of the Trustee, and the Holders of \$1,000,000 or more in face amount of Bonds Outstanding, at any time or from time to time, upon two Business Days' notice, to inspect all of such of its properties, books and records as pertain to the Project. The Issuer shall maintain a system of accounting, with respect to the Project, established and administered in accordance with sound business practices to permit preparation of financial statements in conformity with generally accepted accounting principles. The Issuer, at its expense, shall furnish or cause to be furnished to the Trustee and to the Holders of \$1,000,000 or more in face amount of Bonds Outstanding, the following:

(a) Annual Statements. As soon as practicable and in any event within one hundred eighty (180) days after the end of each fiscal year, audited financial statements, covering the operations of the Facility for such fiscal year, including consolidated statements of income, consolidated balance sheets and statements of changes in financial position, each accompanied by statements in comparative form for the preceding fiscal year and an opinion issued in accordance with generally accepted auditing standards as approved by the American Institute of Certified Public Accountants and signed by an Independent Certified Public Accountant, to the effect that the financial statements have been prepared in accordance with generally accepted accounting principles and fairly present the financial condition of the Project as of such date. Such financial statements and opinion shall be in form acceptable to the Issuer. A copy of such financial statements and opinions shall be furnished to the College. Such financial statements shall be accompanied by a special report issued and signed by the independent certified public

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shall hold the same for inspection by any Bondowner. The Trustee shall be entitled to rely upon any opinions, letters, certifications, recommendations and reports provided in accordance with this Indenture and shall have no responsibility or duty to conduct any independent inquiry or investigation as to the adequacy or enforceability of any insurance procured or maintained by the Issuer or as to whether the Issuer has in fact procured and maintained the insurance required under this Indenture. No acceptance or approval of any insurance policy by the Trustee shall relieve or release the Issuer from any liability, duty or obligation under the provisions of this Indenture.

### SECTION 12.08 Application of Proceeds of Condemnation and Insurance.

(a) The Issuer shall pay over to the Trustee for deposit in the Net Awards Account upon receipt thereof (i) all Net Awards received under any title insurance policy relative to the Real Property. (ii) the Net Awards of the taking of all or any portion of the Real Property taken in the exercise of the power of eminent domain, condemnation or through the exercise of any right or any obligation on the part of any public authority to purchase the same, or as a result of any agreement between the Issuer and any such public authority, and (iii) the Net Awards under any insurance policy payable in connection with the loss, damage or destruction of any portion of the Real Property.

(b) The Net Proceeds paid to the Trustee as provided in paragraph (a) shall be applied as set forth in paragraphs (c) and (d) below.

(c) Subject to paragraph (d) below, the Issuer shall, within thirty (30) days of such loss, damage, destruction or taking, apply such proceeds to the repair or replacement of the lost, damaged, destroyed or taken property, as follows:

(A) the Issuer shall deliver to the Trustee a certificate of the Architect setting forth his estimate of the cost of repairing or replacing the lost, damaged, destroyed or taken property to be repaired or replaced and the time required therefor; and

(B) The Issuer shall deliver to the Trustee evidence satisfactory to the Trustee establishing whether or not the amount of such proceeds, together with any other moneys deposited or available for deposit in the Net Awards Account will be sufficient to pay the costs of repairing or replacing the lost, damaged, destroyed or taken property; and if such amounts are sufficient, and if the certificate of the Architect referred to above establishes that the lost, damaged, destroyed or taken property can be replaced, rebuilt or restored within six (6) months, the Issuer shall proceed with and diligently pursue such repair or replacement with the funds in the Net Awards Account, or with other funds of the Issuer, which other funds shall be deposited in the Net Awards Account and disbursed as provided herein with respect to such Account.

(d) If either (A) the amount of such proceeds, together with any other moneys of the Issuer deposited or available for deposit in the Net Awards Account will not be sufficient to pay the costs of repairing or replacing the lost, damaged, destroyed or taken property to be repaired or replaced, or (B) the time required to complete such repair or replacement exceeds the six months, the Issuer shall instruct the Trustee to call for

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accountant referred to above, stating that such person has reviewed this Indenture and the Mortgage and that during the performance of his examination of the financial statements referred to above, no Events of Default were noted, or, if any Events of Default were noted, specifying the nature thereof, the period of existence thereof, and the action proposed to be taken to correct such Event of Default. Such financial statements shall also be accompanied by certificates of the Issuer and the Manager (i) setting forth that there exists no default or defaults or any event which with the giving of notice or the passage of time would become a default with respect to any loans, notes, debentures, bonds, leases or other debt instruments of such entity then outstanding, or, if any default or defaults exist, specifying the nature thereof, the period of existence thereof and what action such entity proposes to take with respect thereto and (ii) establishing compliance with the rate covenant set forth in Section 12.01 hereof.

(b) Audited Financials of the College. As soon as practicable in any event within one hundred eighty days (180) after the end of each fiscal year of the College, audited financial statements of the College.

(c) Other Financial Statements. Forthwith after the issuance thereof, any other financial statements of Issuer prepared by any independent accountant or any in-house staff accountant of the Issuer and furnished directly or indirectly to any other creditor.

(d) Notice of Incipient Default. The Issuer will notify the Trustee and the Holders of the Bonds immediately of the occurrence of any Event of Default hereunder or the occurrence of any other event which with the giving of notice, the passage of time, or both, will become an Event of Default hereunder.

(e) Other Information. Such other documents and information, including but not limited to those documents or that information described in (a) through (c) above in this Section 12.09, relating to the affairs of the Issuer and the Project as the Trustee and the Holders of not less than ten percent (10%) of the principal amount of the Bonds Outstanding reasonably may request from time to time.

**SECTION 12.10 Additional Debt.** The Issuer will issue no additional debt or debt obligations, except for Additional Bonds issued pursuant to the provisions hereof, unless such debt or debt obligations shall specifically provide: (a) that such debt is in all respects junior and subordinate to the Bonds issued hereunder; (h) that such debt is non-recourse to the Issuer other than cash-flow in excess of amounts necessary to pay the Outstanding Bonds; and (c) that such debt does not constitute a claim against the Issuer to the extent that funds are insufficient to pay such debt. In no event shall any default with respect to any subordinate debt constitute a default with respect to any Outstanding Bonds.

**SECTION 12.11 Environmental Cleanup; Reports.** The Issuer shall at all times operate the Project in such manner as to avoid any environmental contamination of all or any part of the Project and shall immediately commence and complete with due diligence any action necessary to cure any such environmental contamination.

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**SECTION 12.12 Engineering Report.** The Issuer shall retain an independent architect, which may be the original architect who designs the Facility, or engineer to examine the Facility and to recommend a schedule of maintenance and repair for the Facility. The deposit to the Repair and Replacement Reserve Account of the Operation and Maintenance Fund shall be adjusted for the Fiscal Year beginning July 1, 2012, and not less frequently than every fifth Fiscal Year thereafter to the extent necessary to provide funds necessary to implement such schedule of maintenance and repair.

**SECTION 12.13 Reversion to the College.** At the time that all Bonds are discharged (as defined in this Section), but not when the Bonds are deemed paid pursuant to Article VII hereof:

(a) all of the moneys and securities remaining in the various funds and accounts created under this Indenture (except for such amounts and securities as may have been pledged to the Trustee by the Issuer under Article VII hereof to bring about a defeasance of all or any Bonds or Authorized Denominations thereof) shall inure, at the option of the College, to the benefit of the College, without demand or further action on the part of the College, free of all charge, lien or encumbrance and the Trustee shall forthwith transfer such moneys to the College upon request by the Issuer therefor; and

(b) title to the Project shall, at the option of the College, be vested in the College, without demand or further action on its part free of the lien of this Indenture and of the leases which the Issuer may have entered into with the tenants thereof; and free of all other charges, liens or encumbrances, including leases, management contracts and other similar encumbrances.

For purposes of this Section 12.13, the Bonds are "discharged" when cash for the payment of all outstanding principal and interest is available at the place of payment on the final maturity date, or on the redemption date fixed pursuant to this Indenture and interest on the Bonds ceases to accrue thereon, and all other amounts required to be paid by the Issuer hereunder have been paid. Encumbrances that do not significantly interfere with the enjoyment of the Real Property, such as are most easements to utility companies, are not considered encumbrances for purposes of this Section.

**SECTION 12.14 College's Right to Defeas.**

(a) At any time that there are any Bonds Outstanding, the College shall have all of the rights of the Issuer to defease the Bonds pursuant to the provisions of Article VII hereof, and in the event of the exercise of such right, all references in Article VII, and elsewhere in this Indenture, pertaining to the rights of the Issuer to defease the Bonds shall be understood to refer to the College except that, in addition to the amounts ordinarily payable by the Issuer to bring about a defeasance of the Bonds, the College shall also pay all other reasonable costs, if any, incident to such defeasance.

(b) If the College exercises this right of defeasance, the College shall obtain fee title, free of all charges, liens and encumbrances (including the leases of units in the Project that may have been entered into by the Issuer) and exclusive possession of the

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**ARTICLE XIII**

**MISCELLANEOUS**

**SECTION 13.01 Successors of the Issuer.** In the event of the dissolution of the Issuer, all the covenants, stipulations, promises and agreements in this Indenture contained, by or on behalf of, or for the benefit of, the Issuer, shall bind or inure to the benefit of the successors of the Issuer from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power, property or duty of the Issuer shall be transferred.

**SECTION 13.02 Parties in Interest.** Except as herein otherwise specifically provided, nothing in this Indenture expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the Issuer, the Trustee, the College, the Registrar, the Paying Agent and the Owners of Bonds issued hereunder any right, remedy or claim under or by reason of this Indenture, this Indenture being intended to be for the sole and exclusive benefit of the Issuer, the Trustee, the College, the Registrar, the Paying Agent and the Owners of Bonds issued hereunder.

**SECTION 13.03 Severability.** If anyone or more of the provisions of this Indenture or of the Bonds shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Indenture or the Bonds; this Indenture and the Bonds shall be construed and enforced as if such illegal or invalid provisions had not been contained herein or therein.

**SECTION 13.04 No Personal Liability of Issuer Officials.** No covenant or agreement contained in the Bonds or in this Indenture shall be deemed to be the covenant or agreement of any official, officer, agent or employee of the Issuer in his individual capacity, and neither the members of the Issuer nor any official executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

**SECTION 13.05 Bonds Owned by the Issuer.** In determining whether Owners of the requisite aggregate principal amount of the Bonds have concurred in any direction, consent or waiver under this Indenture, Bonds which are owned by the Issuer (unless the Issuer, owns all Bonds which are then Outstanding, determined without regard to this Section 13.05) shall be disregarded and deemed not to be Outstanding for the purpose of any such determination, except that, for the purpose of determining whether the Trustee shall be protected in relying on any such direction, consent or waiver, only Bonds which the Trustee knows are so owned shall be so disregarded. Bonds so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Bonds and that the pledgee is not the Issuer or any person directly or indirectly controlling or controlled by or under direct or indirect common control with the Issuer. In case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee.

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Real Property underlying the Project, and any additions and improvements to that Real Property, subject to Permitted Encumbrances.

(c) If the College exercises its right under this Section 12.14, the Issuer must immediately cancel all encumbrances on the Project, including leases and management contracts. Any lease, management contract, or other similar encumbrance on the Project will be considered immediately cancelled if the lessee management company or other user vacates the Project within a reasonable time, generally not to exceed ninety (90) days, after the date the College exercises its right under this Section. Encumbrances that do not significantly interfere with the enjoyment of the Project, such as most easements granted to utility companies, are not considered encumbrances for purposes of this Section. Leases with a remaining term of less than one (1) year and in existence as of the date of execution hereof shall be deemed to be encumbrances that do not significantly interfere with enjoyment of the Project and shall be exempt from the requirement that the Issuer cancel them upon the exercise of the College's rights under this Section.

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**SECTION 13.06 Counterparts.** This Indenture may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Indenture.

**SECTION 13.07 Governing Law.** The laws of the State shall govern the construction and enforcement of this Indenture and of all Bonds issued hereunder.

**SECTION 13.08 Notices.** Except as otherwise provided in this Indenture, all notices, certificates, requests, requisitions or other communications by the Issuer, the College, the Trustee, the Registrar, or the Paying Agent, pursuant to this Indenture shall be in writing and shall be sufficiently given and shall be deemed given when sent by Electronic Means or when mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

Issuer: Florida Keys College Campus Foundation, Inc.  
5901 West College Road  
Key West, Florida 33040  
Telephone No. (305) 809-3266  
Fax No. (305) 292-5155  
Email: john.kehoe@fkcc.edu

Counsel to Issuer: William N. DeVane, Jr., Esq.  
DeVane & Dorl, P.A.  
5701 Overseas Highway  
Marathon, Florida 33050  
Telephone No. (305) 743-6565  
Fax No. (305) 743-4143  
Email: devane\_dorl\_law@yahoo.com

The College: Florida Keys Community College  
5901 West College Road  
Key West, Florida 33040  
Telephone No. (305) 809-3266  
Fax No. (305) 292-5155  
Email: john.kehoe@fkcc.edu

Trustee, Bond Registrar Zions First National Bank  
Attn: Corporate Trust Dept.  
1001 17<sup>th</sup> Street  
Suite 850  
Denver, Colorado 80202  
Telephone No. (720) 947-7470  
Fax No. (720) 947-7480  
Email: neil.witoff@zionsbank.com

Any of the foregoing may, by notice given hereunder to each of the others, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

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**SECTION 13.09 Consents.** Any consents that may be required to be given by the Owners of the Bonds before an action is taken hereunder shall be given by the Owners of the Bonds as were such as of the Record Date, and in the event the Bonds are being held under a book entry system, the consent to be obtained shall be that of the Beneficial Owners of the Bonds. Any amendments which require the consent of any specified percentage of Bondholders shall not take effect until such consent is filed with the Trustee.

**SECTION 13.10 Holidays.** If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Indenture, shall not be a Business Day, such payment may, unless otherwise provided in this Indenture, be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Indenture, and no interest shall accrue for the period after such nominal date.

IN WITNESS WHEREOF, Florida Keys Community College has caused this Indenture to be executed by its President or Vice President and attested by its Secretary and its official seal to be impressed hereon and duly attested, and the Trustee has caused this Indenture to be executed in its behalf and its corporate seal to be impressed hereon and duly attested, all as of the day and year first above written.

**FLORIDA KEYS COLLEGE CAMPUS  
FOUNDATION, INC.**

(SEAL)

By: \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

**STATE OF FLORIDA**

**COUNTY OF MONROE**

I, \_\_\_\_\_, a Notary Public in and for the said County in the State aforesaid, do hereby certify that \_\_\_\_\_ and \_\_\_\_\_, personally known to me to be the same persons whose titles are, Chairman and Secretary, respectively, of Florida Keys College Campus Foundation, Inc. subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said Corporation and as their own free and voluntary act, for the uses and purposes therein set forth and took an oath.

Given under my hand and notarial seal this \_\_\_\_ day of November, 2010.

\_\_\_\_\_  
Notary Public

My Commission Ends: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_

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**Zions First National Bank, as Trustee**

[SEAL]

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Vice President and Trust Officer

**STATE OF COLORADO**

**COUNTY OF DENVER**

I, \_\_\_\_\_, a Notary Public in and for the said County in the State aforesaid, do hereby certify that \_\_\_\_\_, personally known to me to be the same person whose title is, Vice President of Zions First National Bank, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed, and delivered the said Instrument as the free and voluntary act of said Bank and as his own free and voluntary act, for the uses and purposes therein set forth and took an oath.

Given under my hand and notarial seal this \_\_\_\_ day of November, 2010.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Ends: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Personally Known \_\_\_\_ or  
Produced Identification \_\_\_\_  
Type of Identification \_\_\_\_  
Produced

**ACCEPTANCE BY THE COLLEGE**

Florida Keys Community College, hereby accepts all of the rights granted to it pursuant to this Indenture, and approves the terms and conditions of the Bonds, as defined herein, as of the date hereof, November 8, 2010.

**FLORIDA KEYS COMMUNITY  
COLLEGE**

(SEAL)

By: \_\_\_\_\_  
Chairman

Attest:

\_\_\_\_\_  
Witness

**STATE OF FLORIDA**

**COUNTY OF MONROE**

I, \_\_\_\_\_, a Notary Public in and for the said County in the State aforesaid, do hereby certify that \_\_\_\_\_, and \_\_\_\_\_, personally known to me to be the same persons whose titles are, President and Secretary of the Florida Keys Community College, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that they, being thereunto duly authorized, signed, and delivered the said instrument as their free and voluntary act of said County and as their own free and voluntary act, for the uses and purposes therein set forth and took an oath.

Given under my hand and notarial seal this \_\_\_\_ day of November, 2010.

\_\_\_\_\_  
Notary Public

(SEAL)

Personally Known \_\_\_\_ or  
Produced Identification \_\_\_\_  
Type of Identification \_\_\_\_  
Produced

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## EXHIBIT "A"

## LEGAL DESCRIPTION OF REAL PROPERTY

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All acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of this Bond have happened, exist and have been performed as so required.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture until it shall have been authenticated by the execution by the Trustee of the Certificate of Authentication endorsed hereon.

THIS BOND SHALL NOT BE A DEBT OF FLORIDA KEYS COMMUNITY COLLEGE, NOR OF THE STATE OF FLORIDA OR ANY POLITICAL SUBDIVISION THEREOF, AND NEITHER FLORIDA KEYS COMMUNITY COLLEGE, NOR THE STATE OF FLORIDA NOR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL THIS BOND BE PAYABLE OUT OF ANY FUNDS OTHER THAN THOSE OF THE ISSUER RELATING TO THE PROJECT, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN THE INDENTURE. THIS BOND SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT OR BOND LIMITATION OR RESTRICTION. THE COLLEGE AND ISSUER HAVE NO TAXING POWER.

This Bond is one of the duly authorized issue of \$8,305,000 Senior Leasehold Industrial Development Revenue Bonds, (Florida Keys Community College Project), Series 2010, of the Issuer (the "Bonds"). The Bonds have been issued in one series, designated the Senior Leasehold Industrial Development Revenue Bonds (Florida Keys Community College Project), Series 2010 (the "Bonds"). The Bonds are issued under and pursuant to the Constitution and laws of the State, particularly Florida Statutes Annotated, Section 159.25 et seq., as amended (the "Act"), a resolution duly adopted by the Issuer, and a Trust Indenture, dated as of November 1, 2010 (the "Indenture"), between the Issuer and the Trustee. The Bonds are being issued to finance the costs of the Project as defined and further described in the Indenture. The Facility is to be leased by the Issuer from the College.

All terms capitalized herein and not otherwise defined herein shall have the meaning assigned to them in the Indenture.

The Bonds shall initially be authenticated on the date of delivery and shall bear interest from the Dated Date. Bonds issued in exchange for or upon the registration or transfer of Bonds on or after the first Interest Payment Date thereon shall bear interest from and be dated as of the Interest Payment Date immediately preceding the date of the Trustee's authentication thereof, unless the date of such authentication shall be an Interest Payment Date to which interest on the Bonds has been paid in full or duly provided for in accordance with the terms hereof, in which case, they shall be dated as of such Interest Payment Date, or unless this Bond is authenticated prior to May 1, 2011, in which event such Bond shall bear interest from May 1, 2011, provided, however, that if, as shown by the records of the Trustee, interest on the Bonds is in default, such Bonds shall bear interest from the date on which interest was last paid on such Bonds, or, if no interest has been paid on the Bonds, from the Dated Date. No interest shall accrue on past-due interest.

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## EXHIBIT "B"

## FORM OF BOND

No. R-

\$8,305,000

UNITED STATES OF AMERICA  
STATE OF FLORIDA  
FLORIDA KEYS COLLEGE CAMPUS FOUNDATION, INC.  
\$8,305,000 SENIOR LEASEHOLD INDUSTRIAL DEVELOPMENT REVENUE  
BOND (FLORIDA KEYS COMMUNITY COLLEGE PROJECT), SERIES 2010

<u>Maturity Date</u>	<u>Dated Date</u>	<u>Interest Rate</u>	<u>CUSIP</u>
November 1, 2042	November 12, 2010	7.00%	34076DAA7

REGISTERED OWNER: CEDE &amp; CO.

PRINCIPAL AMOUNT: \$8,305,000

Florida Keys College Campus Foundation, Inc. (the "Issuer"), a not-for-profit corporation duly organized and existing under the laws of the State of Florida (the "State"), for value received, hereby promises to pay (but only out of the Revenues of the Issuer, as hereinafter defined) to the Registered Owner stated above or registered assigns, on the Maturity Date stated above, or upon earlier redemption, the Principal Amount stated above, together with interest on said Principal Amount payable semiannually on May 1 and November 1 of each year, commencing May 1, 2011, from the Dated Date, or from the most recent date to which interest has been paid, whichever is later, until payment of said Principal Amount has been made or duly provided for, at the interest rate specified above. Principal and premium, if any, is payable upon the presentation and surrender hereof at the principal corporate trust office (the "Principal Office") of Zions First National Bank, as Trustee (the "Trustee") and Paying Agent (the "Paying Agent") under the Indenture (hereinafter defined). The interest on this Bond is payable by check mailed to the Registered Owner hereof at his address as it appears on the Bond Registrar, at the close of business on the 15th day of the month (whether or not a business day) next preceding the interest payment date (the "Record Date"), irrespective of any transfer of this Bond subsequent to such Record Date and prior to such interest payment date, unless the Issuer shall be in default payment of interest due on such interest payment date, except that the Paying Agent will make payments of interest on such Bonds by wire transfer if permitted by the Indenture. In the event of any such default, such defaulted interest shall be payable to the Registered Owner of this Bond at the close of business on a special record date for the payment of defaulted interest as established by notice mailed by the Paying Agent to the Registered Owner of this Bond not less than fifteen (15) days preceding such special record date. Payment of the principal of, premium, if any, and interest on this Bond shall be in lawful money of the United States of America. If interest has not been paid, then no interest shall accrue on past-due interest.

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The Bonds are equally and ratably secured, to the extent provided in the Indenture, by the pledge thereunder of the "Revenues," which term means (i) all rentals, revenues, grants (including rent subsidies) and fees, receivable in respect of the Project, including, without limitation, any receipts from concessionaires servicing the Project, any vending machine and laundry machine or similar receipts, with respect to the Project (but exclusive of security deposits for residential or concessionaire units in the Project to the extent such security deposits are not applied to the payment of rentals); (ii) Net Awards; (iii) interest earned on moneys deposited in any fund or account under the Indenture, except the Rebate Fund; (iv) any monetary recovery obtained by the Trustee through the exercise of its rights under the Mortgage (as defined in the Indenture), subject to the application thereof as provided in the Mortgage; (v) all other moneys deposited into the Revenue Fund from whatever source; and (vi) all proceeds thereof. In no event shall the term "Revenues" apply to the funds on deposit in the Rebate Fund.

Anything herein to the contrary notwithstanding, in no event shall the Interest rate borne by this Bond exceed the Maximum Interest Rate.

Upon surrender for transfer or exchange of any Bond at its Principal Office, the Trustee shall authenticate and deliver in the name of the transferee or transferees in the case of transfer, or in the name of the Owner in the case of an exchange, a new fully registered Bond or Bonds of Authorized Denominations of the same maturity in the aggregate principal amount which the Owner is entitled to receive.

The Issuer and the Trustee shall not be required to issue or register the transfer of any Bonds during a period beginning on the Record Date (or the Special Record Date if an Event of Default as defined in the Indenture shall have occurred), and ending at the close of business on an Interest Payment Date or the redemption or maturity date, as the case may be.

The Issuer, the Trustee and the Paying Agent may treat the person in whose name a Bond is registered on the books of the Issuer maintained by the Trustee as the absolute Owner thereof for all purposes, whether or not such Bond shall be overdue, and shall not be bound by any notice to the contrary.

This Bond shall be subject to special mandatory redemption prior to maturity, at the price of the principal amount thereof and Interest accrued thereon to the date of redemption, in whole on any date or in part on any Interest Payment Date upon the transfer of moneys to the Principal Account from the Net Awards Account, as provided in the Indenture.

The Bonds shall be subject to special optional redemption at the price of the principal amount thereof, plus accrued Interest thereon on the date of redemption, and without premium, in whole or in part on any date in the event that credit enhancement or a rating shall be obtained for all or part of the Bonds.

The Bonds are also subject to special mandatory redemption prior to maturity in whole at any time on the earliest practicable date selected by the Trustee, and in no event

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later than ninety (90) days, following the occurrence of a Determination of Taxability. The redemption price of the Bonds to be redeemed in such event shall be 105% of the principal amount thereof plus interest accrued to the redemption date.

The Bonds are also subject to mandatory redemption in part prior to maturity by lot, in such manner as shall be determined by the Trustee, through Amortization Installments by operation of the Amortization Account, at redemption prices equal to 100% of the principal amount thereof plus interest accrued to the redemption date, on September 1 in the years and amounts as set forth in the Indenture.

The Bonds are also subject to mandatory redemption at the price of par plus interest accrued to the date of redemption if the Bonds shall be accelerated following the occurrence of an Event of Default as described in Section 8.02 of the Indenture.

The Bonds are subject to redemption prior to their stated date of maturity at the option of the Issuer, in whole on any date on or after November 1, 2020, or in part, by lot in increments of \$5,000, on November 1, 2020, or on any Interest Payment Date thereafter, in such order as the Issuer may elect at the following redemption prices (expressed as percentages of the principal amount of the Bonds so redeemed) plus accrued Interest to the date of redemption if redeemed in the following years:

Redemption Period (Both Dates Inclusive)	Redemption Price
November 1, 2020 through October 31, 2021	102%
November 1, 2021 through October 31, 2022	101%
November 1, 2022 and thereafter	100%

In the event of a partial redemption of any Term Bond, Amortization Installments for such Term Bond shall be reduced in such manner as the Trustee may determine to reflect such redemption.

If any of the Bonds are called for redemption, the Trustee shall give notice, in the name of the Issuer, of the redemption of such Bonds, which notice shall be given as provided in the Indenture.

Any Bonds and portions thereof which have been duly selected for redemption and which are deemed to be paid in accordance with the Indenture shall cease to bear Interest on the specified redemption date and shall thereafter cease to be entitled to any lien, benefit or security under the Indenture except to receive payment of the redemption price thereof.

The Owner of this Bond shall have no right to enforce the provisions of the Indenture, or to Institute action to enforce the covenants therein, or to take any action with respect to any default under the Indenture, or to Institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Indenture.

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#### TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue described in the within mentioned Indenture.

**Zions First National Bank**  
as Trustee

By: \_\_\_\_\_  
Authorizing Officer

Authentication Date: \_\_\_\_\_

#### ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
PLEASE INSERT SOCIAL SECURITY OR OTHER  
IDENTIFYING NUMBER OF ASSIGNEE

\_\_\_\_\_  
Please print or typewrite name and address, including postal zip code of transferee.

\_\_\_\_\_  
the within Bond and all  
rights thereunder, and hereby irrevocably constitutes and appoints  
\_\_\_\_\_  
Agent to transfer the within Bond on the books kept for

\_\_\_\_\_  
Assignor

NOTICE: The signature to this Assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatever.

Date: \_\_\_\_\_

Signature Guaranteed: \_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by a member firm of the STAMP, SEMP or MSP signature guarantee medallion programs.

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With certain exceptions as provided therein, the Indenture may be modified or amended only with the consent of the Owners of not less than sixty percent (60%) in aggregate principal amount of the applicable series of Bonds outstanding under the Indenture.

Reference is hereby made to the Indenture, a copy of which is on file with the Trustee for the provisions, among others with respect to the nature and extent of the rights, duties and obligations of the Issuer, the Trustee, the Registrar, and the Owners of the Bonds and for the definitions of capitalized terms not defined herein. The Owner of this Bond, by the acceptance hereof, is deemed to have agreed and consented to the terms and provisions of the Indenture.

The Issuer, the Trustee, the Registrar and the Paying Agent may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for all purposes, whether or not this Bond is overdue, and neither the Issuer, the Trustee, the Registrar nor the paying Agent shall be affected by any notice to the contrary.

No covenant or agreement contained in this Bond or in the Indenture shall be deemed to be a covenant or agreement of any official, officer, agent or employee of the Issuer in his individual capacity, and neither the members of the Issuer, nor any official executing this Bond, shall be liable personally on this Bond or be subject to any personal liability or accountability by reason of the issuance or sale of this Bond.

This Bond shall not be entitled to any right or benefit under the Indenture, or be valid or become obligatory for any purpose, until this Bond shall have been authenticated by the Trustee, or its successor as Trustee or a duly authorized authenticating agent, by execution of the certificate of authentication inscribed hereon.

IN WITNESS WHEREOF, the Issuer has caused this Bond to be signed by the manual or facsimile signature of its President and its seal or a facsimile thereof to be imprinted hereon and attested by the manual or facsimile signature of its Secretary, all as of the Dated Date hereof.

**FLORIDA KEYS COLLEGE CAMPUS  
FOUNDATION, INC.**

(SEAL)

By: \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

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#### EXHIBIT "C"

\$8,305,000 FLORIDA KEYS COLLEGE CAMPUS FOUNDATION, INC. SENIOR LEASEHOLD INDUSTRIAL DEVELOPMENT REVENUE BONDS (FLORIDA KEYS COMMUNITY COLLEGE PROJECT), SERIES 2010, dated November 12, 2010, fully registered and numbered from R-1; bearing interest from their dated date (payable May 1, 2011, and semiannually thereafter on May 1 and November 1 in each year) at the rate of 7.00% per annum, subject to sinking fund redemption and maturing on November 1, 2042, as follows:

Amount	Redemption Dates
	Maturity
\$90,000.00	11/01/2013
95,000.00	11/01/2014
100,000.00	11/01/2015
110,000.00	11/01/2016
115,000.00	11/01/2017
125,000.00	11/01/2018
130,000.00	11/01/2019
140,000.00	11/01/2020
150,000.00	11/01/2021
160,000.00	11/01/2022
175,000.00	11/01/2023
185,000.00	11/01/2024
200,000.00	11/01/2025
210,000.00	11/01/2026
225,000.00	11/01/2027
245,000.00	11/01/2028
260,000.00	11/01/2029
280,000.00	11/01/2030
295,000.00	11/01/2031
320,000.00	11/01/2032
340,000.00	11/01/2033
365,000.00	11/01/2034
390,000.00	11/01/2035

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<u>Amount</u>	<u>Redemption Dates</u>
	<u>Maturity</u>
415,000.00	11/01/2035
445,000.00	11/01/2037
475,000.00	11/01/2038
510,000.00	11/01/2039
545,000.00	11/01/2040
585,000.00	11/01/2041
625,000.00	11/01/2042*

\*Final Maturity

**EXHIBIT "D"**  
**DEPOSIT OF BOND PROCEEDS**

At closing \$7,723,650.00 in proceeds of the Bonds (that is \$8,305,000 in aggregate principal amount of the Bonds, minus the OID of \$166,100.00, and minus the Underwriter's discount of \$415,250.00), was deposited with the Trustee as follows:

Deposit to Permitted Cost Fund (Construction Account)	\$5,374,355.92
Deposit to Permitted Cost Fund (Construction Acct FF&E)	\$200,000.00
Deposit to Permitted Cost Fund (Developer Reserve Account)	\$500,000.00
Deposit to Permitted Cost Fund (Cost of Issuance Acct)	\$260,042.00
Deposit to Investment Fund (Contingency Account)	\$200,000.00
Deposit to Bond Fund (Capitalized Interest Account)	\$506,693.00
Deposit to Debt Service Reserve Fund	\$671,350.00

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**EXHIBIT "E"**

**REQUISITION**

Requisition No. -

To: Zions First National Bank

Re: \$8,305,000 Florida Keys College Campus Foundation, Inc. Senior Leasehold Industrial Development Revenue Bonds (Florida Keys Community College Project), Series 2010

This Requisition from the Permitted Cost Fund is delivered to you pursuant to Section 5.03 of the Trust Indenture, dated as of November 1, 2010 (the "Indenture"), by and between Florida Keys College Campus Foundation, Inc. (the "Issuer") and Zions First National Bank, as Trustee (the "Trustee"). Reference is made to the Permitted Cost Fund created in Section 5.01(c) of the Indenture securing the above-captioned Bonds.

The Issuer hereby requisitions from the Permitted Cost Fund the amounts indicated below and requests that such amounts be disbursed as described below.

<u>Purpose</u>	<u>Amount Requisitioned</u>	<u>Account Name</u>
Is this a reimbursement to the Issuer?	YES	NO

In support of this requisition, the undersigned hereby certifies as follows:

- (1) He (She) is the Issuer's Authorized Representative as defined in the Indenture.
- (2) Each obligation, item of cost or expense mentioned above and in the Invoices attached hereto has been properly incurred, is in payment of a part of the Cost of the Project, is a proper charge against the Permitted Cost Fund, has not been heretofore reimbursed to the Issuer or otherwise been the basis of any previous withdrawal and the Borrower is entitled to reimbursement thereof.
- (3) If reimbursement is requested, each obligation, item of cost or expense mentioned above has been paid by the Issuer, is a reimbursement of a part of the Cost of the Project, is a proper charge against the Permitted Cost Fund, has not been heretofore reimbursed to the Borrower or otherwise been the basis of any previous withdrawal and above obligation is made.
- (4) There is no mechanics', materialmens', suppliers', vendors' or other similar lien or right to lien, chattel lease or conditional sale contract, or other contract or

obligation which should, be satisfied or discharged before payment of the above obligation is made.

(5) Payment of the above obligation, when added to all other payments previously made from the Permitted Cost Fund, will not result in less than 100% of the amounts expended from the Permitted Cost Fund being expended and used for the acquisition, construction reconstruction or improvement of land or property of a character subject to the allowance for depreciation within the meaning of Section 144(a)(1) of the internal Revenue Code of 1986, as amended.

(6) The above obligation is chargeable to the capital account of the Project or would be so chargeable either with a proper election of the Issuer or but for a proper election by the Issuer to deduct such amounts.

(7) The above obligation was incurred after July 20, 2009.

(8) After making the disbursements requested hereby, there remains on deposit in the Construction Account funds sufficient to pay in full the costs of completing the Project.

You are hereby requested to pay the Total Requisition Amount in the following manner:

- (a) To the Issuer by check in the amount of \$ \_\_\_\_\_; and/or
- (b) To the Issuer by deposit of \$ \_\_\_\_\_ in its general account (No. \_\_\_\_\_) maintained at \_\_\_\_\_; and/or
- (c) Other:

Executed by the undersigned on the \_\_\_\_ of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Issuer's Authorized Representative

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**EXHIBIT "F"**

**REQUISITION FORM FOR THE OPERATING ACCOUNT OF THE  
OPERATION AND MAINTENANCE FUND**

Requisition No. -

To: Zions First National Bank  
as Trustee

Re: \$8,305,000 Florida Keys Campus Foundation, Inc. Senior Leasehold Industrial  
Development Revenue Bonds (Florida Keys Community College Project), Series  
2010

This Requisition from the Operating Account of the Operation and Maintenance  
Fund is delivered to you pursuant to Section 5.08 of the Indenture, dated as of November  
1, 2010 (the "Indenture"), by and between Florida Keys Community College (the  
"Issuer") and Zions First National Bank, as Trustee (the "Trustee"). Reference is made to  
the Operating Account created in Section 5.01(d) of the Indenture securing the above-  
captioned Bonds.

The Issuer hereby requisitions from the Operating Account the amounts indicated below  
and request that such amounts be wired directly to the Project Account (No. \_\_\_\_\_)  
created under the Management Agreement, as defined in the Indenture and maintained at  
\_\_\_\_\_.

Purpose

Amount Requisitioned

In support of this requisition, the undersigned hereby certifies as follows:

- (1) He (She) is the Issuer's Authorized Representative as defined in the  
Indenture.
- (2) The amount requested shall be used only to pay the costs of the ordinary  
operation, repair and maintenance of the Facility during the thirty (30) days following the  
date of this requisition.
- (3) That as of the date hereof the balance on deposit in the aforementioned  
Project Account is \$ \_\_\_\_\_.

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(4) That the attached invoices, bills, receipts, etc., totaling \$ \_\_\_\_\_  
represent proper proof of expenditures made from the Project Account for the costs of the  
ordinary operation, repair and maintenance of the Facility during the thirty (30) days  
preceding the date of this requisition.

(5) There is no mechanics', materialmens', suppliers', vendors' or other similar  
lien or right to lien, chattel lease or conditional sale contract, or other contract or  
obligation which should be satisfied or discharged with respect to those expenditures  
mentioned in paragraph 4 above.

Executed by the undersigned on \_\_\_\_\_, 2010.

By: \_\_\_\_\_  
Issuer's Authorized Representative

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**EXHIBIT "G"**

**REQUISITION FORM FOR THE REPAIR AND REPLACEMENT RESERVE  
ACCOUNT OF THE OPERATION AND MAINTENANCE FUND**

Requisition No. -

To: Zions First National Bank  
as Trustee

Re: \$8,305,000 Florida Keys College Campus Foundation, Inc. Senior Leasehold  
Industrial Development Revenue Bonds (Florida Keys Community College  
Project), Series 2010

This Requisition from the Repair and Replacement Reserve Account of the Operation and  
Maintenance Fund is delivered to you pursuant to Section 5.08 of the Indenture, dated as  
of November 1, 2010 (the "Indenture"), by and between Florida Keys College Campus  
Foundation (the "Issuer") and Zions First National Bank as Trustee (the "Trustee").  
Reference is made to the Repair and Replacement Reserve Account created in Section  
5.01(d) of the Indenture securing the above-captioned Bonds.

The Issuer hereby requisitions from the Repair and Replacement Reserve Account the  
amounts indicated below and request that such amounts be wired directly to the Project  
Account (No. \_\_\_\_\_) created under the Management Agreement, as defined in the  
Indenture and maintained at \_\_\_\_\_.

Purpose

Amount Requisitioned

In support of this requisition, the undersigned hereby certifies as follows:

- (1) He (She) is the Issuer's Authorized Representative as defined in the  
Indenture.
- (2) The amount requested shall be used only to pay the costs of major  
expenditures with respect to the Facility during the thirty (30) days following the date of  
this requisition.
- (3) That as of the date hereof the balance on deposit in the aforementioned  
Project Account is \$ \_\_\_\_\_.

(4) That the attached invoices, bills, receipts, etc., totaling \$ \_\_\_\_\_  
represent proper proof of expenditures made from the Project Account for the costs of  
major expenditures with respect to the Facility during the thirty (30) days preceding the  
date of this requisition.

(5) There is no mechanics', materialmens', suppliers', vendors' or other similar  
lien or right to lien, chattel lease or conditional sale contract, or other contract or  
obligation which should be satisfied or discharged with respect to those expenditures  
mentioned in paragraph 4 above.

Executed by the undersigned on \_\_\_\_\_, 2010.

By: \_\_\_\_\_  
Issuer's Authorized Representative

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**APPENDIX B**

**FORM OF THE LEASEHOLD MORTGAGE AND SECURITY AGREEMENT**

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This document was prepared by:

Richard B. Miller, Esq.  
Georgia Bar No. 508175  
Sell & Melton, L.L.P.  
P.O. Box 229  
Macon, Georgia 31202-0229  
(478) 464-5342

LEASEHOLD MORTGAGE AND SECURITY AGREEMENT  
(Florida Keys Community College Project)

THIS LEASHOLD MORTGAGE AND SECURITY AGREEMENT (the "Mortgage"), dated as of November 1, 2010, from FLORIDA KEYS COLLEGE CAMPUS FOUNDATION, INC. (hereinafter the "Issuer" or "Mortgagor"), a not-for-profit corporation formed and existing under the laws of the State of Florida, to Zions First National Bank, a banking corporation with a corporate trust office in Denver, Colorado, as trustee (hereinafter, together with its respective successors and assigns, collectively called the "Mortgagee" or "Trustee"), under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals being used therein shall be as defined in Article I hereof):

EXEMPT PER DEPARTMENT OF REVENUE:  
INTANGIBLE TAX AND DOCUMENTARY STAMP TAX

WITNESSETH:

A. Pursuant to the Act, the Issuer has sold and delivered its Senior Leasehold Industrial Development Revenue Bonds (Florida Keys Community College Project), Series 2010 (hereinafter the "Bonds"), in the aggregate principal amount of \$8,305,000, the amount secured by this Mortgage. The Bonds have been designated the Florida Keys College Campus Foundation, Inc. Senior Leasehold Industrial Development Revenue Bonds (Florida Keys Community College Project), Series 2010. The Bonds have been issued pursuant to that certain Trust Indenture, dated as of November 1, 2010, between the Issuer and the Trustee (the "Indenture"). Reference is hereby made to the Indenture, a counterpart of which is on file and available for inspection at the Notice Address. The terms of the Indenture are incorporated herein by reference.

B. By the Indenture, the Issuer has assigned to the Trustee, to secure payment of the Bonds, the Revenues (as defined in the Indenture) which term includes, *inter alia*, any recovery or payment that the Trustee may obtain or be entitled to by reason of its rights under this Mortgage, the Indenture and that certain Interlocal Agreement, dated as of November 1, 2010 (hereinafter the "Interlocal Agreement") between the Issuer and Florida Keys Community College (hereinafter the "College").

(c) Any award, remuneration, settlement or compensation heretofore made or hereafter to be made by any governmental authority with respect to the Mortgaged Property or any part thereof ("Awards"), all proceeds (including premium refunds) payable or to be payable under each policy of insurance relating to the Site and for the Facility or any part thereof ("Insurance Proceeds"), and all rentals, revenues, payments, repayments, income, proceeds, issues, profits, charges and moneys derived by the Mortgagor from the Site or the Facility ad the use, operation and leasing of all or any portion thereof, and all leases and tenancies and occupancy agreements of any nature whatsoever (and any extensions and renewals thereof) now or hereafter granted by or on behalf of the Mortgagor affecting all or any portion of the Site or the Facility (the "Leases") and all escrow funds held with respect thereto (other than tenant security deposits); and

(d) All easements, rights of way or use, strips and gores of land, streets (open or proposed), alleys, passages, sewer rights, waters, water courses, water rights and powers, minerals, crops, timber, shrubs, landscaping and other emblems now or hereafter located on or above or under the Site or any part thereof, and all estates, rights, titles, interests, revisions, remainders, liberties, permits, licenses, privileges, franchises, servitudes, tenements, hereditaments and all appurtenances now or hereafter belonging to or anyway appertaining to the Site or the Facility; and

(e) All rights of the Mortgagor in, to, under, by virtue of, arising from or growing out of any and all present or future contracts, instruments, accounts, general intangibles, insurance policies, permits, licenses, trade names, goodwill plans, appraisals, reports, paid fees, choses-in-action, subdivision restrictions or declarations or other intangibles whatsoever now or hereafter dealing with, affecting or concerning the Site or the Facility or any portion thereof or interest therein, including but not limited to: (i) all contracts, plans and permits for or related to the Site or its development or the construction or refurbishing of the Facility, including, any contracts with architects, engineers, general contractors, suppliers, service providers, or other contractors, (ii) any agreements for the provision of water or sewer services or other utilities to the Site, (iii) all payment, performance and/or other bonds, (iv) any unearned premiums on any insurance policies, (v) the Leases and any Rents derived from the Mortgaged Property or the Site (except for security deposits held on behalf of tenants), any contracts now existing or hereafter made for the sale by Mortgagor of all or any portion of the Site and/or the Facility, the Leases or any right or interest therein or deriving therefrom, including any deposits paid by any purchasers (howsoever such deposits may be held) and any proceeds of such sales contracts, including any purchase-money notes and mortgages made by such purchasers (and the Mortgagor agrees that it shall have no right to sell or encumber or contract to sell or encumber all or any portion of the Site, the Facility, the Leases or any right or interest therein or deriving therefrom without the express prior written consent of the Mortgagee), and (vi) any declaration of condominium, restrictions, covenants, easements or similar documents now or hereafter recorded against the title to all or any portion of the Site.

(f) (i) All licenses, permits, approvals, certificates and agreements with or from all boards, agencies, departments, governmental or otherwise, relating directly or indirectly to the ownership, use, operation and maintenance of the Mortgaged Property, or the construction of development improvements on the Mortgaged Property, whether heretofore or hereafter issued or

C. Under the terms of the Indenture, the Issuer is obligated to make payments of principal and interest to the Trustee, with respect to the Bonds.

NOW, THEREFORE, as an inducement to and in consideration of the purchase of the Bonds by the purchasers thereof, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and to secure: (i) the payment of the Bonds and any Additional Bonds, (ii) the payment and performance of all obligations of the Issuer or the College under the Mortgage Documents (hereinafter defined), including the payments required of the Issuer when due under the Indenture, (iii) the payment of any amounts advanced or costs incurred by the Mortgagee to protect the Mortgaged Property (as hereinafter described) or in enforcement of the Mortgage Documents, and (iv) the performance and observance of each covenant and agreement of the Mortgagor in the Mortgage Documents (all of the foregoing obligations of the Mortgagor are referred to herein as the "Obligations"), the Mortgagor does hereby bargain, sell, convey, mortgage, assign and grant a security interest in and transfer unto the Mortgagee, and its successors and assigns, all of the right, title and interest of the Mortgagor in and to the following property (the "Mortgaged Property");

(a) The real estate comprising approximately .53 acres described in Exhibit "A" attached hereto (collectively, the "Site"); and

(b) Except for the Furniture and Equipment, as defined herein, all buildings, structures, additions, improvements, facilities, fixtures, fittings, machinery, apparatus, installations, furniture, equipment and other property, now or hereafter located in, upon or under, or based at the Site or used in connection with the ownership, operation, maintenance, management or leasing of the Site or any buildings structures or improvements thereon (collectively, the "Facility"), including without limitation: all machinery, equipment, appliances, fixtures, conduits and systems for generating or distributing air, water, heat, air conditioning, electricity, light, fuel or refrigeration, or for ventilating or sanitary purposes, or for the exclusion of vermin or insects, or for the removal of dust, refuse, sewage or garbage, or for fire prevention or extinguishing; all elevators, escalators, lifts and dumbwaiters; all motors, engines, generators, compressors, pumps, lift stations, tanks, boilers, water heaters, furnaces and incinerators; all furniture, furnishings, fixtures, appliances, installations, partitions, shelving, cabinets, lockers, vaults and wall safes; all carpets, carpeting, rugs, underpadding, linoleum, tiles, mirrors, wall coverings, windows, storm doors, awnings, canopies, shades, screens, blinds, draperies and related hardware, chandeliers and light fixtures; all plumbing, sinks, basins, toilets, faucets, pipes, sprinklers, disposals, laundry appliances and equipment, and kitchen appliances and equipment; all alarm, safety, electronic, telephone, music, entertainment and communications equipment and systems; all janitorial, maintenance, cleaning, window washing, vacuuming, landscaping, and recreational equipment and supplies; and any other items of property, real, personal or mixed, wherever kept or stored, if acquired by the Mortgagor with the intent of incorporating them in and/or using them in connection with the Site or any improvements to the Site; together also with all additions thereto and replacements and proceeds thereof; all of which foregoing items described in this paragraph (b) are hereby declared to be part of the real estate and encumbered by this Mortgage; and

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executed (collectively, the "Licenses"), said boards, agencies, departments, governmental or otherwise being hereinafter collectively referred to as "Governmental Authorities"; (ii) all deposits made in connection therewith; and (iii) all contracts and agreements to provide utilities to the Site; and

(g) All right, title and interest of the Mortgagor in and under any agreements by and between Mortgagor and any contractors, architects or engineers concerning the Site (collectively, the "Contracts"); and

(h) All funds and investments held under the Indenture (other than the Rebate Fund) or any Mortgage Documents and all earnings thereof, the Revenues, all bank accounts and any and all other security and collateral of any nature whatsoever now or hereafter given for the repayment of the indebtedness or the performance and discharge of the Obligations of the Mortgagor under the Indenture and the Mortgage Documents; and

(i) The Management Agreement.

TO HAVE AND TO HOLD the Mortgaged Property unto the Mortgagee, its successors and assigns, in fee simple forever;

PROVIDED, HOWEVER, that, if the Mortgagor shall pay or cause to be paid to the Mortgagee the principal and interest and all other sums payable or to become payable with respect to the Obligations and shall also fully perform all of the covenants, conditions and terms of this Mortgage and the other Mortgage Documents and shall not permit or keep or suffer to occur any default under this Mortgage or any other Mortgage Documents, then this Mortgage shall cease, terminate and be void, but shall otherwise remain in full force and effect.

PROVIDED, FURTHER, that the rights of the Mortgagee under this Mortgage in and to the Mortgaged Property hereby given and conveyed to the Trustee subject to Permitted Encumbrances;

AND, IT IS HEREBY COVENANTED that this Mortgage is given and the Mortgaged Property is to be held upon the terms herein set forth.

ARTICLE I

DEFINITIONS

SECTION 1.01 Use of Defined Terms. In addition to the words and terms elsewhere defined in this Mortgage or by reference to another document, the words and terms set forth in Section 1.02 hereof shall have the meaning therein set forth unless the context or use expressly indicated different meanings or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms therein defined. Capitalized words appearing herein and not otherwise defined shall have the meaning assigned to them in the Indenture:

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SECTION 1.02 Definitions. As used herein:

"Act" means the Florida Statutes Annotated, Section 159.25 et seq., as amended, and other provisions of applicable law.

"Affiliate" means any Person which directly or indirectly, through one or more intermediaries controls, or is controlled by, or through one or more intermediaries controls, or is controlled by, or is under common control with, the Person specified.

"Bond Fund" means the trust fund by that name created pursuant to Section 5.01 of the Indenture.

"Bond Legislation" means the Act and the resolution of the Mortgagor providing for the issuance of the Bonds.

"Bonds" means those certain \$8,305,000 Florida Keys College Campus Foundation, Inc. Senior Leasehold Industrial Development Revenue Bonds (Florida Keys Community College Project), Series 2010, issued pursuant to the Indenture.

"College" means Florida Keys Community College, Key West Florida.

"Commercial Code" means the Uniform Commercial Code as enacted in the State, as from time to time duly amended or supplemented.

"Construction Account" means the trust account by that name created by Section 5.01 of the Indenture.

"Construction Liens" includes construction liens created under Florida law.

"County" means Monroe County, Florida.

"Event of Default" means any of the events described as an Event of Default in Section 6.02 hereof.

"Flood Insurance" means insurance described in Section 3.03(c) hereof.

"Force Majeure" means any cause beyond the control of the Mortgagor, and any Affiliate thereof, and shall include but not be limited to acts of God, acts of a public enemy, insurrection, riot, strike or labor disputes, fire, explosion, flood, blizzards, other severe weather conditions, breakdown of or damage to a plant, equipment or facilities, interruption to transportation, embargo, orders of injunctions of a federal, state or local court, agency or governmental body having jurisdiction, acts of civil or military authority, or inability to obtain materials, supplies, or equipment from others because of similar causes.

"Indenture" means the Trust Indenture dated as of even date with this Mortgage between the Issuer and the Trustee, as amended or supplemented from time to time.

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1001 17<sup>th</sup> Street, Suite 850  
Denver, Colorado 80202  
Telephone No. (720) 947-7470  
Fax No. (720) 947-7480  
Email: neil.witoff@zionsbank.com

"Obligations" means the performance and observance of each covenant and agreement of the Mortgagor in the Mortgage Documents.

"Outstanding" means such term as defined in the Indenture.

"Permitted Cost Fund" means the Permitted Cost Fund created by Section 5.01 of the Indenture.

"Permitted Exceptions" or "Permitted Encumbrances" means at any time: (i) general real estate taxes and assessments not yet due and payable or being contested in accordance with the provisions of this Mortgage; (ii) easements for public way, ingress and egress, private and public utilities, and light and air, provided that such easements which do not materially restrict or impair the intended use of the Project or adversely affect its fair market and rental value; (iii) any condition or title for which the Title Insurer shall insure the Trustee against loss or damage by the issuance of such Title Insurer's endorsement; (iv) this Mortgage and all encumbrances defined as "Permitted Encumbrances" in the Indenture; (v) liens for labor and materials provided to the Project for which payment is not yet due or which are being contested in accordance with the provisions of this Mortgage and which are subordinate to the lien of this Mortgage; (vi) the reversionary interest of the County set forth in the deed of conveyance from the County to the Issuer of the Site, which reversionary interest shall be subordinate to the lien of this Mortgage and of the Indenture and (vii) such other title exceptions as may be specifically set forth as Permitted Encumbrances on Exhibit "B" to this Mortgage.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Premiums" means those premiums for insurance policies described in Section 3.05(a) hereof.

"Project" means the Site, the Facility and the Mortgaged Property, including all rights appurtenant thereto.

"Required Property Insurance Coverage" means the insurance coverage specified in Section 3.03 hereof.

"Restoration" means the restoration or rebuilding of the Project, as described in Article V hereof.

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"Insurance Requirements" means those insurance requirements described in Section 4.01 hereof.

"Issuer" means the Mortgagor.

"Interlocal Agreement" means that certain Interlocal Agreement, dated as of November 1, 2010, between the Issuer and the College.

"Lease" means that certain Lease Agreement, dated as of November 1, 2010, between the Issuer and the College.

"Legal Requirements" means those legal requirements described in Section 4.01 hereof.

"Management Agreement" means the agreement pertaining to the management of the Project between the Issuer and the Manager, dated as of November 1, 2010.

"Manager" means the College or such other person or entity as may be selected from time to time by the College as Manager under the Management Agreement.

"Mortgage" means this Leasehold Mortgage and Security Agreement, as amended or supplemented from time to time.

"Mortgage Documents" means this Mortgage, the Indenture, the Interlocal Agreement, any UCC financing statements related hereto, and any other instruments or documents executed by the Mortgagor from time to time in favor of any Mortgagee in connection with the Obligations.

"Notice Address" means:

As to Mortgagor: Florida Keys College Campus Foundation, Inc.  
5901 West College Road  
Key West, Florida 33040  
Telephone No. (305) 809-3266  
Fax No. (305) 292-5155  
Email: john.kehoe@fkcc.edu

As to Mortgagor's Counsel: William N. DeVane, Jr., Esq.  
DeVane & Dori, P.A.  
5701 Overseas Highway  
Marathon, Florida 33050  
Telephone No. (350) 743-6565  
Fax No. (305) 743-1143  
Email: devane\_dori\_law@yahoo.com

As to Mortgagee: Zions First National Bank  
Attn: Corporate Trust Dept.

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"Revenue Fund" means the trust fund by that name created pursuant to Section 5.01 of the Indenture.

"Revenues" shall have the same meaning assigned to it in the Indenture.

"Site" means the real property described in Exhibit "A" attached hereto and herein incorporated.

"State" means the State of Florida.

"Tax and Insurance Deposits" means the deposits by the Mortgagor for the payment of Taxes and Premiums, as defined in Section 3.05(a) hereof.

"Taxes" means those taxes, assessments and other governmental charges described in Sections 3.01 and 3.05(a) hereof.

"Title Insurer" means Old Republic National Title Insurance Company.

"Trustee" means Zions First National Bank, Denver, Colorado, as Trustee, and any successor Trustee, at the time serving as such under the Indenture.

SECTION 1.3 Interpretation. Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Act or the Florida Statutes, includes the section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way an impairment of the rights or obligations of the Issuer, the Trustee, the owners of any Bonds, the Mortgagee, or the Mortgagor under the Indenture, the Bond Legislation, the Bonds, the Mortgage Documents or any other instrument or document entered into in connection with any of the foregoing.

The terms "hereof," "hereby," "herein," "hereto," "hereunder," and similar terms refer to this Mortgage; and the term "hereafter" means after, and the term "heretofore" means before, the date of delivery of this Mortgage. The word "may" shall mean "may, but shall not be required to," and the word "including" shall mean "including but not limited to." Words of the masculine gender include the feminine and neuter, and when the sense so indicates words of the neuter gender may refer to any gender.

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## ARTICLE II

### PRESERVATION OF SECURITY

**SECTION 2.01 Representations and Warranties.** The Mortgagor represents and warrants that (i) the Mortgagor is lawfully seized with a good and marketable leasehold interest in the Site and has good and marketable leasehold title to all properties and rights included in the Mortgaged Property, subject only to Permitted Encumbrances, (ii) the Mortgagor has full right and authority to sell, mortgage, encumber and convey the Mortgaged Property as provided herein, and (iii) the Mortgagor will warrant and defend to the Mortgagee such title to the Mortgaged Property and the lien and interest of the Mortgagee against all claims and demands, and will maintain the priority of the lien of, and the security interest granted by, this Mortgage upon the Mortgaged Property until the Mortgagor shall be entitled to defeasance as provided herein.

The Mortgagor warrants, represents and agrees that there is and has been no discharge or disposal of any hazardous waste or other toxic substance (as such terms are defined by any applicable federal, state, or local governmental law, rule, ordinance or regulation) on any real property subject to this Mortgage, or contamination of the real property subject to this Mortgage by any such substances; that any storage or utilization of any hazardous or toxic substances or utilization is, has been, and will be at all times, in full compliance with all applicable federal, state or local laws, rules, ordinances, and regulations. The Mortgagor warrants that a study of the real property has been conducted by a qualified person prior to its making the recitals in this section.

**SECTION 2.02 Recordation.** The Mortgagor, at its expense, shall cause this Mortgage, any instruments supplemental hereto, financing statements, including all necessary amendments, supplements and appropriate continuation statements, to be recorded, registered and filed, and to be kept recorded, registered and filed in such manner and in such places as may be required in order to establish, preserve and protect the lien of this Mortgage, subject only to Permitted Encumbrances, as a valid first mortgage lien on all real property, fixtures and interests therein included in the Mortgaged Property and a valid, perfected security interest in all tangible and intangible personal property, fixtures and interest included in the Mortgaged Property (including any such properties acquired after the execution hereof).

**SECTION 2.03 After-Acquired Property.** It is the intent hereof to secure payment of the aforesaid Bonds and to secure any other amount or amounts that may be added to the mortgage indebtedness under the terms of this instrument or the Indenture, whether such additions are obligatory or are to be made at the option of the Mortgagee, or otherwise, within thirty years (30) from the date hereof, to the same extent as if such future advances are made on the date of execution of this mortgage. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid balance so secured at one time shall not exceed \$8,305,000 (Eight Million Three Hundred Five Thousand Dollars), plus interest thereon, and any disbursements made for the payment of taxes, levies, or insurance on the

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Mortgaged Property or any part thereof (including any taxes levied upon or with respect to the Revenues, income or profits of the Mortgagor from the Mortgaged Property) which, if not paid, may become or be made a lien on the Mortgaged Property, or any part thereof, or a charge on such revenues, income or profits (collectively, "Impositions"). The Mortgagor shall exhibit to the Mortgagee copies of the official receipts of payment therefor. Notwithstanding the foregoing, the Mortgagor may, at its expense and after prior notice to the Mortgagee, by appropriate proceedings diligently prosecuted, contest in good faith the validity or amount of any Impositions, and the Mortgagor need not pay the items so contested during the period of contest; provided, however, that such non-payment will not subject the Mortgaged Property or any part thereof to the risk of imminent loss or forfeiture. During the period of (and as a condition to) such contest when the Impositions, so contested remain unpaid, the Mortgagor shall deposit into escrow with the Trustee such excess moneys, (if any) as are available pursuant to the terms of Section 5.06(b)(viii) of the Indenture, equal in amount to the amount of such contested Impositions, and interest or penalties thereon, if such nonpayment would result in a lien on the Mortgaged Property, or any part thereof, senior to or on a parity with the lien hereof, or if such Imposition exceeds \$50,000. During the time that such contested amount are held in escrow by the Trustee, they will not be a part of the Revenues, and the Trustee shall be entitled to reasonable compensation by the Mortgagor to maintain of such escrow.

**SECTION 3.02 Construction and Other Liens.** The Mortgagor shall not permit any mechanics' or other liens to be filed or to exist against the Mortgaged Property by reason of work, labor, services or materials supplied or claimed to have been supplied to, for or in connection with the Mortgaged Property or to the Mortgagor or any one holding the Mortgaged Property or any part thereof through or under the Mortgagor. If any such lien shall be filed, the Mortgagor shall, within thirty (30) days after the filing thereof but subject to the right to contest as set forth herein, cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. Notwithstanding the foregoing, the Mortgagor may, at its expense and after prior written notice to the Mortgagee, by appropriate proceedings duly instituted and diligently prosecuted, contest in good faith the validity of the amount of any such lien; provided, however that such nonpayment will not subject the Mortgaged Property or any parts thereof to the risk of imminent loss or forfeiture. During the period of (and as a condition to) such contest when such lien or claim remains unpaid, the Mortgagor shall deposit into escrow with the Trustee such excess moneys, (if any) as are available pursuant to the terms of Section 5.06(b)(viii) of the Indenture, equal to the amount of such contested lien or claim, and interest or penalties thereon, if such nonpayment would result in a lien on the Mortgaged Property, or any part thereof senior to or on a parity with the lien hereof, or if such claim exceeds \$50,000. In lieu of such deposit, the Mortgagor may deliver a mechanics' lien release bond or title insurance endorsement insuring against any loss or damage to the Mortgagor by reason of such lien or claims. While such contested amounts are held in escrow by the Trustee, they will not be a part of the Revenues, and the Trustee shall be entitled to reasonable compensation by the Mortgagor to maintain such escrow.

**SECTION 3.03 Insurance.** The following "Required Property Insurance Coverage" shall be maintained in effect with respect to the Project at all times:

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mortgaged property, with interest on such disbursements at a rate of interest equal to the yield on the Bonds as defined in the Indenture.

**SECTION 2.04. Liens and Encumbrances.** Except as permitted by the Mortgage Documents, the Mortgagor shall not directly or indirectly create or permit to remain (and will promptly discharge) any mortgage, lien, encumbrance or charge on, pledge of, security interest in or conditional sale or other title retention agreement with respect to the Mortgaged Property or the interest of the Mortgagor or the Mortgagee therein or any Revenues, income, profits or other sums arising from the Mortgaged Property (including any lien, encumbrance or charge arising by operation of law) other than Permitted Encumbrances.

The mention in any such financing statement of (a) the rights in or the proceeds of any insurance policy, (b) any Award in eminent domain proceedings for a taking or for loss of value, (c) the Mortgagor's interest as lessor in any present or future Lease or right to income growing out of the use or occupancy of the Site or the Facility, whether pursuant to lease or otherwise, or (d) any other item included in the definition of the Mortgaged Property, shall not alter any rights of the Mortgagee herein nor impair the priority of the Mortgagee's lien and security interest on the Mortgaged Property; such mention is to protect the Mortgagee if any court holds that notice of the Mortgagee's priority of interest with respect to any such portion of the Mortgaged Property must be filed in the Commercial Code records in order to be effective against or to take priority over any particular class of Persons, including the federal government and any subdivision, agency or instrumentality of the federal government.

**SECTION 2.05 No Claims Against Mortgagee.** Nothing contained in this Mortgage shall constitute any request by the Mortgagee, express or implied, to perform any labor or services or to furnish any materials or other property for the Mortgaged Property or shall give the Mortgagor any right, power or authority to contract for or permit the performance of any labor or services or the furnishing of any materials or other property to give rise to a claim against the Mortgagee or a claim that a lien based on the performance of such labor or services or the furnishing of any such materials or other property is prior to the lien hereof.

**SECTION 2.06 Security for Bonds.** This Mortgage is intended to secure all Bonds issued under the Indenture, including any Additional Bonds. This Mortgage shall become effective upon its delivery, and shall be delivered to the office of the Clerk of the Circuit Court of Monroe County, Florida, for recordation, recordation fees if any, having been paid by the Mortgagor.

## ARTICLE III

### TAXES, MECHANICS' LIENS AND INSURANCE

**SECTION 3.01 Payment of Taxes and Other Governmental Charges.** In accordance with Section 3.05 hereof, the Mortgagor shall pay, promptly when due and before penalty or interest accrue thereon, all taxes, assessments, whether general or special, and other governmental charges of any kind whatsoever, foreseen or unforeseen, ordinary or extraordinary, that may now or at any time hereafter be assessed or levied against or with respect to the

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(a) All-risk property insurance against loss and/or damage due to perils, including but not limited to perils such as fire, windstorm, smoke, lightning, explosion, riot, hail, vandalism, malicious mischief, collapse, and other perils not customarily excluded from an "all-risk" policy in amounts not less than the full replacement value of the Project from time to time; and

(b) Comprehensive general public liability insurance protecting against death, bodily injury and property damage, in the combined amount of \$1,000,000, including coverage for contractual liability, personal injury and broad form property damage providing coverage for all explosion, collapse and underground (XCU) hazards, independent contractors and subcontractors, product/completed operations, all in said amount; and

(c) Flood insurance, if the Project is located in an area designated as a special flood hazard area pursuant to the Flood Disaster Protection Act of 1973, as amended, or other applicable law, with such insurance to be at least the amount available under the National Flood Insurance Program, and if available under policies issued by other sources, then in such additional amounts as the Trustee may reasonably require; and

(d) All-risk builder's risk coverage for the full completed replacement value of the Project during the period prior to the completion of any restoration or rebuilding of the Project ("Restoration"), with a completed operations endorsement, in amounts not less than the full replacement value of the applicable portion of the facility from time to time and bearing an agreed amount endorsement; and

(e) Statutory workers' compensation coverage; and

(f) Employer's liability coverage in the amount of not less than \$1,000,000; and

(g) Umbrella excess liability coverage providing "following form" coverage over the insurance coverages required by clauses (b) and (f) of this Section 3.03 in the annual aggregate amount of \$2,000,000.

**SECTION 3.04 Insurance Policies.**

(a) All insurance policies shall be in accordance with the requirements of this Mortgage and the Indenture. All insurance described in Section 3.03 shall name the Mortgagee as the insured.

(b) The insurance described in clauses (b) and (g) of Section 3.03 must name the Issuer and the Trustee as additional insureds. The insurance described in Clauses (a), (c), (d), and (f) of Section 3.03 must insure the interest of the Mortgagee in the Project as mortgagee; must contain a waiver of the right of subrogation, and a provision that interests of the Trustee shall not be invalidated by any act or omission of the Mortgagor or owner of the Project, or any part thereof; and must include a standard non-contributory mortgage loss payable clause in favor of the Trustee. All insurance policies shall contain a provision that the Issuer and the Trustee shall receive not less than thirty (30) days prior written notice before any expiration, cancellation or modification of, or material reduction in coverage under such policies shall become effective

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and shall provide that no claims shall be paid thereunder without at least ten (10) days prior written notice to the Trustee and the Issuer. The Mortgagor shall immediately give notice to the Trustee of any notice received by the Mortgagor of any expiration, cancellation or modification of, or material reduction in coverage under, any such policy. The requirements of this paragraph (b) shall apply to any separate policies of insurance taken out by the Mortgagor concurrent in form or contributing in the event of loss with the insurance policies described in Section 3.03.

(c) Each insurer must be an authorized insurer in the State. The Mortgagor shall annually, within 30 days of the anniversary date of the issuance of the Bonds, provide a written certification to the Trustee that all of the insurance requirements pursuant to the Mortgage Documents have been satisfied and are in full force and effect as of the date of such certification.

(d) All insurance premiums shall be paid in full at least one month in advance. At the time the Bonds are issued the Mortgagor shall furnish a written certification to the Trustee that all of the insurance requirements pursuant to the Mortgage Documents have been satisfied and are in full force and effect as of the issuance date of the Bonds.

(e) Approval or acceptance by the Mortgagor, of any insurance policies shall not be deemed a representation by the Mortgagor as to the adequacy of coverage of such insurance policies or the solvency of the insurer.

(f) If the Mortgagor fails to procure, pay the premium for, or deliver to the Mortgagee any of the insurance policies or renewals as required herein, the Mortgagee may elect, but shall not be obligated, to effect such insurance and pay the premiums therefor. The Mortgagor shall pay to the Mortgagee on demand any premiums so paid with interest thereon, to the extent permitted by law, at a rate of interest equal to two percent (2%) per annum above the interest rate on the Bonds, from the time of the advance for such payment by the Mortgagee, and said advance and interest shall be part of the Obligations secured by the Mortgage.

(g) In the event of the foreclosure of this Mortgage, or other transfer of title to the Mortgaged Property, or any part thereof, by non-judicial foreclosure sale or deed in lieu of foreclosure, the purchaser of the Mortgaged Property, or such part thereof, shall succeed to all of the Mortgagor's rights, including any rights to unexpired insurance and unearned or returnable premiums, in and to all insurance policies required by this Section and Section 3.03 hereof, subject to limitations on assignment of blanket policies and limited to such rights as relate to the Mortgaged Property or such part thereof. If the Mortgagee shall acquire title to the Mortgaged Property, or any part thereof, the Mortgagee shall thereupon (as between the Mortgagor and the Mortgagee) become the sole and absolute owner of the insurance policies and all proceeds payable under the insurance policies for the Mortgaged Property, or such part thereof, required by this Section and Section 3.03, with the sole right to collect and retain all unearned or returnable premiums thereon for the Mortgaged Property, or such part thereof.

#### SECTION 3.05 Deposits for Taxes and Insurance Premiums.

(a) To assure the payment of all taxes, assessments and other governmental charges provided in Section 3.01 ("Taxes") and of all premiums for insurance policies required to be

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or settlement of such contest; provided, that (i) such postponement does not materially affect in an adverse manner the lien or security interest hereof to any part of the Mortgaged Property or subject the Mortgage, the Mortgagee or the Mortgaged Property, or any part thereof, to the risk of civil or criminal liability or other loss, damage or forfeiture, and (ii) the Mortgagor shall deposit in escrow with the Mortgagee pending such contest moneys sufficient (including interest thereon) to cover the cost of compliance with such contested Legal Requirement.

SECTION 4.02 Maintenance and Use of Mortgaged Property. The Mortgagor hereby covenants that, at its expense, it will keep or cause to be kept the Mortgaged Property in good order and condition (ordinary wear and tear excepted) and will make all necessary or appropriate repairs, replacements and renewals thereof, interior, exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen. The Mortgagor will not do, or permit to be done, any act or thing which might increase the risk of fire or other hazard to the Mortgaged Property or any part thereof or would increase any Premium payable with respect to the Mortgaged Property, or which would or could result in the cancellation of any insurance policy on the Mortgaged Property or the Mortgagor, nor materially impair the value or usefulness of the Mortgaged Property or any part thereof. The Mortgagor will not commit or permit any waste of the Mortgaged Property or any part thereof, and will not permit any unlawful occupation, business or trade to be conducted on the Mortgaged Property or any part thereof. The Mortgagor shall, at its expense, promptly comply with the Management Agreement and all rights of way or use, privileges, franchises, servitudes, licenses, easements, tenements, hereditaments and appurtenances forming a part of the Mortgaged Property and all instruments creating or evidencing the same, to the extent compliance therewith is required of the Mortgagor thereunder.

SECTION 4.03 Disposition of Mortgaged Property, Liens and Encumbrances. The Mortgagor shall not sell, convey, assign, transfer, lease or dispose of, all or any part of the Mortgaged Property, or any interest therein, or enter into any agreement for any of the foregoing, without consent of the Mortgagee.

The Mortgagor shall not directly or indirectly create or permit to remain, and will promptly discharge, any mortgage, lien, encumbrance or charge on, pledge of, security interest in or conditional sale or other title retention agreement with respect to all or any part of the Mortgaged Property, or any interest therein, or any Revenues, income or profits or other sums arising from the Mortgaged Property of any part thereof including any lien, encumbrance or charge by operation of law) other than Permitted Encumbrances described in Section 2.04 hereof. Mortgagor may, however, contest the imposition of such encumbrance and may permit such encumbrance to remain for so long as Mortgagor shall actively pursue such contest if Mortgagor shall deliver to Trustee an opinion of counsel to the effect that the existence of such encumbrance for the applicable period will not endanger or adversely affect the lien of this Mortgage.

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maintained hereunder ("Premiums"), when due and payable, the Mortgagor shall deposit with the Trustee moneys to pay Taxes and Premiums as provided in the Indenture.

(b) When the Bonds are fully paid, performed and satisfied, any remaining Tax and Insurance Deposits shall be paid to the Mortgagor or purchaser of the Mortgaged Property following any judicial foreclosure or non-judicial foreclosure sale or conveyance by deed in lieu of foreclosure.

(c) The provisions of this Mortgage are for the benefit of the Mortgagor and the Mortgagee. No provision of this Mortgage shall be construed as creating in any party other than the Mortgagor, the Mortgagee and the owners of the Bonds any rights in and to the Tax and Insurance Deposits or any rights to have the Tax and Insurance Deposits applied other than to the payment of Taxes and Premiums. The Mortgagee shall have no obligation or duty to any third party to collect Tax and Insurance Deposits and may waive or postpone any requirement to make such Tax and Insurance Deposits in whole or in part at any time and from time to time.

SECTION 3.06 Worker's Compensation Coverage. The Mortgagor shall maintain or cause to be maintained in connection with the Mortgaged Property any worker's compensation coverage required by the applicable laws of the State.

### ARTICLE IV

#### MAINTENANCE AND USE OF MORTGAGED PROPERTY

SECTION 4.01 Compliance with Legal and Insurance Requirements. The Mortgagor, at its expense, shall promptly comply with all Legal Requirements and Insurance Requirements, and shall procure, maintain and comply with all permits, licenses and other authorizations required for any use being made of the Mortgaged Property, or anticipated to be made, and for the proper construction, installation, operation and maintenance of the Mortgaged Property. The Mortgagor shall comply with any instruments of record at the time in force burdening the Mortgaged Property or any part thereof. As used in this Section, "Legal Requirements" means all laws, statutes, codes, acts, ordinances, resolutions, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of, and agreements with, all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, and any restrictions or agreements of record, which now or at any time hereafter may be applicable to the Mortgaged Property or any part thereof, or any use, anticipated use or condition of the Mortgaged Property or any Persons employed thereon including all zoning, building, land use, noise abatement, occupational health and safety and other governmental requirements relating to health, safety, welfare and environmental protection. "Insurance Requirements" means all provisions of any insurance policy covering or applicable to the Mortgaged Property, all requirements of the issuer of such policy, and all orders, rules, regulations and other requirements of the National Board of "Fire Underwriters (or any other body exercising similar functions) applicable to or affecting the Mortgaged Property or its occupancy, operation or use. The Mortgagor may, at its expense and after prior notice to the Mortgagee, by any appropriate proceedings diligently prosecuted, contest in good faith any Legal Requirement and postpone compliance therewith pending the resolution

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### ARTICLE V

#### DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 5.01 Damage to or Destruction of Mortgaged Property. In any case of any damage to or destruction of the Mortgaged Property or any part thereof, the Mortgagor will promptly give or cause to be given written notice thereof to the Mortgagee generally describing the nature and extent of such damage or destruction and hereby covenants to comply with any obligations imposed thereon under the Indenture. Subject to the provisions of the Indenture, the Mortgagor shall (whether or not any Insurance Proceeds received for such damage or destruction are sufficient for such purpose) promptly commence and complete, or cause to be commenced and completed, the Restoration of the Facility as nearly as practicable to the value, condition and character thereof existing immediately prior to such damage or destruction, with such changes or alterations, however, as the Mortgagor may deem necessary for proper operation of the Mortgaged Property and as may be approved by the Mortgagee and in compliance with all applicable Legal Requirements.

SECTION 5.02 Use of Insurance Proceeds. In connection with the repair or restoration of the Mortgaged Property pursuant to Section 5.01 hereof, Insurance Proceeds shall be paid to and held by the Trustee in the Net Awards Account created under the Indenture. The Insurance Proceeds shall be applied as set forth in the Indenture.

SECTION 5.03 Eminent Domain. If title to or the temporary use of the Mortgaged Property, or any part thereof, is taken by any governmental body through the exercise of the power of eminent domain, the Mortgagor will promptly give written notice thereof to the Mortgagee, describing the nature and extent of such taking and hereby covenants to comply with any covenants imposed thereon under the Indenture. Any Awards received shall be paid to and held by the Trustee in the Net Awards Account of the Operation and Maintenance Fund under the Indenture. The Awards shall be applied in accordance with the Indenture.

### ARTICLE VI

#### EVENTS OF DEFAULT; REMEDIES

SECTION 6.01 Right to Perform Covenants. If the Mortgagor shall fail to make any payment or perform any act required to be made or performed hereunder (including, without limitation, the payments described in Article III hereof) or under the other Mortgage Documents, the Mortgagee without demand upon the Mortgagor and without waiving or releasing any obligation or default, may make such payment or perform such act for the account and at the expense of the Mortgagor, and may enter upon the Mortgaged Property or any part thereof for such purpose and take all such action thereon as, in its sole opinion, may be necessary or appropriate therefor. All payments so made by the Mortgagee and all costs, fees and expenses incurred in connection therewith or in connection with the performance by the Mortgagee of any such act, together with the interest thereon from the date of payment or incurrence at an annual rate equal to two percent (2%) per annum above the interest rate on the Bonds, which interest shall, together with such interest, be additional Obligations secured by this Mortgage and shall be

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paid by the Mortgagor to the Mortgagee on demand. In any action to collect such indebtedness or to foreclose this Mortgage, the Mortgagee shall be entitled to recover such expenses in such action except as limited by law or judicial order or decision entered in such proceedings.

SECTION 6.02 Events of Default. Any one or more of the following events shall be an Event of Default under this Mortgage:

- (a) The occurrence of any "Event of Default" as defined in the Indenture; or
- (b) The transfer or encumbrance of any interest in the Mortgaged Property, or the transfer of any interest in the Mortgage in violation of the Indenture; or
- (c) Any representation or warranty made by the Mortgagor herein, in the Indenture, or in any other Mortgage Document, shall prove to be untrue or incorrect in any material respect;
- (d) The breach of any covenant of the Mortgagor under the Mortgage, any other Mortgage Document; or
- (e) The failure to comply with any covenant contained in the Indenture or in the Interlocal Agreement.

SECTION 6.03 Remedies. If an Event of Default on the part of the Mortgagor shall have occurred and be continuing, the Mortgagee, at any time, at the Mortgagee's election, may exercise in the manner set forth in the Indenture any or all or any combination of the remedies conferred upon or reserved to it under the Indenture. Any moneys received by the Mortgagee pursuant to the exercise of such remedies shall be applied as provided in Section 6.04 of this Mortgage.

SECTION 6.04 Application of Proceeds. Any moneys (including the proceeds of any sale, by foreclosure or otherwise, of the Mortgaged Property or any part thereof or any interest therein) received by the Mortgagee, pursuant to the exercise of any remedies provided in this Mortgage, the other Mortgage Documents or by law, shall be applied to redeem and retire Bonds to the extent such moneys shall permit.

SECTION 6.05 Provisions Subject to Applicable Law. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate the provisions of the Indenture, any applicable law, and are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law.

SECTION 6.06 No Waiver by Mortgagee. No failure by the Mortgagee to insist upon the strict performance of any term hereof or to exercise any right, power or remedy after a breach thereof, shall constitute a waiver of any such term or of any such breach. No waiver of any breach shall affect or alter this Mortgage, which shall continue in full force and effect with respect to any other then existing or subsequent breach.

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SECTION 7.03 Inspection. The Mortgagee and its representatives are hereby authorized to enter upon and inspect the Mortgaged Property at any time during normal business hours during the term of this Mortgage.

SECTION 7.04 Expenses. The Mortgagor will, to the extent permitted by law, immediately upon demand, pay or reimburse the Mortgagee for all reasonable attorneys' fees, costs and expenses incurred by the Mortgagee in any proceedings involving an insolvent or a debtor under federal bankruptcy law, or in any action, proceeding or dispute of any kind in which the Mortgagee is a party, or appears as an intervenor or party plaintiff or defendant affecting or relating to any of the Mortgage Documents, the Mortgagor or any of the Mortgaged Property, including the foreclosure of this Mortgage or any other lien on the Mortgaged Property, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof. Any amounts paid or incurred by the Mortgagee as a result of the application of this Section, shall, except as may be limited by law or judicial order or decision entered in any action to foreclose this Mortgage, be added to the indebtedness secured hereby and secured by the lien and security interest of this Mortgage.

SECTION 7.05 Books, Records and Accounts. The Mortgagor shall keep and maintain or will cause to be kept and maintained such accounts, books and records as are required of it by the Indenture, and shall make them available to such persons and under such circumstances as is provided in the Indenture.

SECTION 7.06 No Merger. It being the desire and intention of the parties hereto that this Mortgage and the lien thereof do not merge in fee simple title to the Mortgaged Property, it is hereby understood and agreed that, should the Mortgagee acquire any additional or other interests in or to the Mortgaged Property or the ownership thereof, then, unless a contrary intent is manifested by the Mortgagee as evidenced by an appropriate document duly recorded, this Mortgage and the lien thereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

SECTION 7.07 General Provisions. This Mortgage shall be deemed to be made under the laws of the State of Florida and for all purposes shall be governed by and construed in accordance with the laws of the State of Florida and shall inure to the benefit of and be binding upon the Mortgagor, the Mortgagee and their permitted successors and assigns. If any term or provision of this Mortgage shall be held to be invalid, illegal or unenforceable, the validity of the remaining provisions hereof shall in no way be affected thereby. The captions or headings herein shall be solely for convenience.

SECTION 7.08 Amendments, Changes and Modifications. Except as otherwise provided in this Mortgage, this Mortgage may not be effectively amended, changed, modified, altered or terminated without the prior written consent of the Mortgagee.

SECTION 7.09 Notice and Payment. Until the Bonds have been paid in full or until the Bonds are deemed paid pursuant to Article VII of the Indenture, and as long as no amounts are in default pursuant to the Indenture, all funds paid to the Mortgagee under this Mortgage shall, after payment to third parties of any amounts required or permitted to be so paid

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SECTION 6.07 Discontinuance of Proceedings and Restoration of Status Quo. If the Mortgage enforces any right, power or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been determined adversely to the Mortgagee, the parties shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no proceeding had been taken.

SECTION 6.08 Reversion to the College. At the time that all Bonds are discharged (as defined in Section 12.13 of the Indenture), but not when the Bonds are deemed paid pursuant to Article VII of the Indenture:

- (a) all moneys and securities remaining in the various funds and accounts under the Indenture (except for amounts and securities pledged to the Trustee by the Issuer under Article VII of the Indenture to defease the Bonds) shall inure, at the option of the College, to the benefit of the College, free of all charge, lien or encumbrance; and,
- (b) each item of Mortgaged Property shall, at the option of the College, revert to the College, free of the lien of this Indenture and of the leases which the Issuer may have entered into with the tenants thereof, and free of all other charges, liens or encumbrances, including leases, management contracts and other similar encumbrances.

SECTION 6.09 College's Right to Defeasance. The College is granted the right to defease the Bonds and to obtain title to the Project pursuant to and in the manner described in Section 12.14 of the Indenture.

## ARTICLE VII

### MISCELLANEOUS

SECTION 7.01 Additional Security. Without notice to or consent of the Mortgagor and without impairment of the lien and rights created by this Mortgage, the Mortgagee may accept from the Mortgagor, or from any other person or persons, additional security for the indebtedness secured by this Mortgage. Neither the giving of this Mortgage nor the acceptance of any such additional security shall prevent the Mortgagee from resorting first to such additional security, or first to the security created by this Mortgage, in either case without affecting the lien hereof and the rights conferred hereunder.

SECTION 7.02 Release and Discharge. If all of the sums due under the Obligations shall have been paid in full and all other sums payable under the Mortgage Documents by the Mortgagor shall have been paid in full and the Mortgagor shall have complied with all the terms, conditions and requirements of the Mortgage Documents, then this Mortgage shall be null and void and of no further force and effect. Upon the written request and at the expense of the Mortgagor, the Mortgagee will promptly execute and deliver such proper instruments of release and discharge as may reasonably be requested to evidence such defeasance, release and discharge.

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pursuant to this Mortgage, be so paid to the Trustee and disbursed by it in accordance with the terms of the Indenture. When the Bonds have been paid in full, and all other amounts due to the Trustee and secured hereunder have been paid or provided for, the Trustee shall pay any amounts remaining in the Bond Fund or the Revenue Fund as provided in the Indenture.

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IN WITNESS WHEREOF, the Mortgagor has executed this Mortgage as of the date hereof.

(SEAL)

FLORIDA KEYS COLLEGE CAMPUS  
FOUNDATION, INC.

By: \_\_\_\_\_  
President

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

Attest: \_\_\_\_\_  
Secretary

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

STATE OF FLORIDA

COUNTY OF MONROE

I, \_\_\_\_\_, a Notary Public in and for the said County in the State aforesaid, do hereby certify that \_\_\_\_\_ personally known to me to be the same person whose title is President of Florida Keys College Campus Foundation, Inc., subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said Corporation and as his voluntary act, for the uses and purposes therein set forth and took an oath.

Given under my hand and notarial seal this \_\_\_\_ day of November, 2010.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Ends: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Personally Known \_\_\_\_ or  
Produced Identification \_\_\_\_  
Type of Identification \_\_\_\_  
Produced \_\_\_\_\_

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EXHIBIT A  
LEGAL DESCRIPTION

IN WITNESS WHEREOF, the Trustee has executed this Mortgage as of the date hereof.

ZIONS FIRST NATIONAL BANK  
as Trustee

[SEAL]

By: \_\_\_\_\_  
Its: Vice President and Trust Officer

STATE OF COLORADO

COUNTY OF DENVER

I, \_\_\_\_\_, a Notary Public in and for the said County in the State aforesaid, do hereby certify that \_\_\_\_\_ personally known to me to be the same person whose title is \_\_\_\_\_ of Zions First National Bank, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said Corporation and as his voluntary act, for the uses and purposes therein set forth and took an oath.

Given under my hand and notarial seal this \_\_\_\_ day of November, 2010.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Ends: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_

Personally Known \_\_\_\_ or  
Produced Identification \_\_\_\_  
Type of Identification \_\_\_\_  
Produced \_\_\_\_\_

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EXHIBIT B  
FLORIDA KEYS COLLEGE CAMPUS FOUNDATION, INC.  
PERMITTED ENCUMBRANCES

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**APPENDIX C**  
**FORM OF THE INTERLOCAL AGREEMENT**

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INTERLOCAL AGREEMENT  
between  
FLORIDA KEYS COMMUNITY COLLEGE  
and  
FLORIDA KEYS COLLEGE CAMPUS FOUNDATION, INC.

INTERLOCAL AGREEMENT WITH RESPECT TO  
FLORIDA KEYS COLLEGE CAMPUS FOUNDATION, INC. PROJECT  
TO BE FINANCED WITH PROCEEDS OF \$8,305,000  
FLORIDA KEYS COLLEGE CAMPUS FOUNDATION, INC.  
SENIOR LEASEHOLD INDUSTRIAL DEVELOPMENT REVENUE BONDS  
(FLORIDA KEYS COMMUNITY COLLEGE. PROJECT),  
SERIES 2010

THIS INTERLOCAL AGREEMENT, dated as of November 1, 2010, between FLORIDA KEYS COMMUNITY COLLEGE, a political subdivision duly created and existing under the Constitution and laws of the State of Florida (the "College"), and FLORIDA KEYS COLLEGE CAMPUS FOUNDATION, INC., a Florida not-for-profit corporation (the "Issuer");

WITNESSETH:

In consideration of the respective representations and agreements hereinafter contained and in furtherance of the mutual public purposes hereby sought to be achieved, the College and the Issuer agree as follows:

ARTICLE I

DEFINITIONS

In addition to the words and terms elsewhere defined in this Interlocal Agreement, the following words and terms as used herein shall have the following meanings unless the context or use indicates another or different meaning or intent:

"Act" means Florida Statutes Annotated, Section 159.25 et seq., as amended.

"Bond" or "Bonds" means the \$8,305,000 Florida Keys College Campus Foundation, Inc. Senior Leasehold Industrial Development Revenue Bonds (Florida Keys Community College Project), Series 2010, to be issued pursuant to the Resolution.

"Bond Fund" means the Bond principal and interest fund created pursuant to the terms of the Resolution.

"Code" means the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder.

"College" means the Florida Keys Community College, a political subdivision created and existing under the Constitution and laws of the State of Florida.

"Facility" means the new one hundred (100)-bed college dormitory facility constructed for the benefit of the College to be constructed by the Issuer as part of the Project.

Dated as of November 1, 2010

This Interlocal Agreement relates to the issuance of \$8,305,000 in aggregate principal amount of Florida Keys College Campus Foundation, Inc. Senior Leasehold Industrial Development Revenue Bonds (Florida Keys Community College, Inc. Project), Series 2010

This instrument was prepared by:

Sell & Melton, L.L.P.  
577 Mulberry Street, Fourteenth Floor  
Macon, Georgia 31201

"Indenture" means that certain Trust Indenture, dated as of November 1, 2010, between the Issuer and Zions First National Bank.

"Interlocal Agreement" means this Interlocal Agreement, dated as of November 1, 2010, between the College and the Issuer.

"Issuer" means Florida Keys College Campus Foundation, Inc., a Florida not-for-profit corporation and its successors and assigns.

"Manager" means the College or such other person or entity as may be selected from time to time by the Issuer, so long as such other person or entity shall enter into a Management Agreement that satisfies the safe harbor provisions of Revenue Procedure 97-13.

"Permitted Cost Fund" means the Project Fund created pursuant to the terms of the Resolution into which proceeds of the Bonds will be deposited.

"Project" means (1) the acquisition of a leasehold interest in approximately .53 acres of land located on the campus of the College in Monroe County, Florida, (2) the construction thereon of the Facility and (3) the funding of various trust funds with the Trustee under this Indenture and (4) the payment of the costs of issuance of the Bonds (hereinafter, collectively, the "Project").

"Resolution" means that certain Bond Resolution of the Issuer, adopted on October 8, 2010, and supplemented on November 8, 2010, pursuant to which the Bonds are issued and secured, and any supplements or amendments thereto.

"Trustee" means Zions First National Bank, with trust offices located in Denver, Colorado.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by the College. The College makes the following representations as the basis for the undertakings on its part herein contained:

- (a) The College wishes for the Issuer to provide on-campus dormitories and related facilities for its students.
- (b) The College has determined that the Project will be in the best interests of the College and will serve other predominately public purposes set forth in the Act.

(c) The College has the power to enter into this Interlocal Agreement and perform its obligations hereunder and has duly authorized the execution and delivery of this Interlocal Agreement.

(d) The College is not subject to any law, ordinance, rule or regulation, or any order or decree of any Court, governmental authority or other tribunal, or any contractual provision or limitation of any nature whatsoever, which in any way restricts or prevents it from entering into this Interlocal Agreement or performing its obligations hereunder.

(e) The College is a political subdivision of the State of Florida.

Section 2.2. Representations by the Issuer. The Issuer makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Issuer is a Florida nonprofit corporation incorporated to satisfy the requirements of Revenue Ruling 63-20.

(b) The Issuer declares that the issuance of the Bonds and the construction and development of the Project and use thereof constitute lawful and valid public purposes consistent with the provisions of the Act.

(c) The Issuer has the power to enter into this Interlocal Agreement and to perform all obligations contained herein.

(d) The Issuer has by proper corporate action been duly authorized to execute and deliver this Interlocal Agreement.

(e) The Issuer is not subject to any by-law, rule or regulation, or any order or decree of any court, governmental authority or tribunal or any contractual limitation or provision of any nature whatsoever which in any way limits, restricts or prevents it from entering into this Interlocal Agreement or performing its obligations thereunder.

ARTICLE III

TERM OF AGREEMENT; CONSTRUCTION  
AND DEVELOPMENT OF PROJECT

Section 3.1. Term Hereof. The term of this Interlocal Agreement is thirty (30) years and is coextensive with the term of the Bonds.

Section 3.2. Issuance of Bonds; Construction and Installation of Project. The Issuer agrees to authorize, sell, issue and deliver the Bonds, and to use the proceeds thereof and other moneys (if any) available to it to finance the Project.

Section 3.3. Services of the Issuer to be Rendered Under this Interlocal Agreement. In addition to agreeing to finance the Project through the issuance of the Bonds, the Issuer agrees, in consideration of the College's commitments and agreements under this Interlocal Agreement, that the Issuer's services with respect to the Project shall include, without limitation:

- (a) building and installing the Facility and coordinating with the College and its agencies and subordinate entities on the construction and installation of the Facility;
- (b) approving any changes deemed necessary or desirable in connection with the Project;
- (c) arranging for and coordinating with the College the supervision of all plans necessary to construct and install the Facility, including the preparation of budgets for various stages of development;
- (d) letting all contracts necessary to implement the construction and installation of the Facility and supervising all improvements so as to assure the prompt completion thereof;
- (e) arranging for and coordinating with the College the provision of all insurance necessary in connection with the Project, if any;
- (f) performing, or causing to be performed, general management and administrative services in connection with the construction and installation of the Facility until the management of the Facility is assumed by the College;
- (g) collecting, managing and investing Bond proceeds and other moneys to be used in constructing and installing the Facility and keeping books of account and records concerning all of the Issuer's activities in connection with the construction and installation of the Facility, or causing such to occur;
- (h) contracting for and providing all necessary legal, appraisal and accounting services in connection with the construction and installation of the Facility.

Section 3.4. Services of the College to be Rendered Under This Interlocal Agreement. In consideration of the Issuer's commitments and agreements under this Interlocal Agreement, the College's services with respect to the Project shall include, without limitation, coordinating with the Issuer the supervision of all plans necessary to construct and install the Facility, including preparation of budgets for various stages of development.

Section 3.5 Disbursement of Project Fund Moneys. Under the Resolution, moneys in the Project Fund shall be disbursed by the Trustee upon receipt of a requisition

or a lien on all or any legally available Non-Restricted Revenues of the College. The obligations of the College herein to consider budgeting and appropriating are subject in all respects to the provisions of Florida law, including but not limited to the Act, and are subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare and safety of the students of the College.

Section 4.2. This Interlocal Agreement as Security for the Bonds. The parties agree and intend that this Interlocal Agreement shall constitute security for the benefit of the owners of the Bonds, and the obligations of the parties hereunder shall be absolute and unconditional and shall not be abated or reduced because of damage to or destruction of the Project, failure to complete the construction and installation of the Project or failure of the Issuer to perform any of its obligations thereunder, or for any reason whatsoever so long as the Bonds remain outstanding and unpaid. Further, the College agrees that it shall not withhold or set-off against any payments required hereunder because of any claimed breach of this Interlocal Agreement by the Issuer or for any other reason whatsoever. The parties further agree that they will not amend this Interlocal Agreement in any manner which would limit, prejudice or adversely affect the rights of the holders and owners of the Bonds.

Section 4.3. No Full Faith and Credit or Taxing Power Pledged. The parties agree that the Bonds shall not be deemed to constitute a general debt, liability or obligation of the Issuer, the College, the State of Florida, or any political subdivision or agency thereof, or a pledge of the faith and credit of the Issuer, or of the State of Florida, or of any political subdivision or agency thereof, but the Bonds shall be payable solely from the revenues provided therefore in certain financing documents to be executed in connection therewith, and the Issuer will not be obligated to pay the Bonds or the interest thereon except from the revenues and proceeds pledged therefore, and neither the faith and credit nor the taxing power of the State of Florida, or any political subdivision or agency thereof, will be pledged to the payment of the principal of premium, if any, or interest on the Bonds. The parties further agree that neither the holders of the Bonds nor anyone else shall be able to compel use of taxing power to service the Bonds. The Issuer and the College have no taxing power.

#### ARTICLE V

##### MISCELLANEOUS

Section 5.1. Use of Proceeds; Amounts Remaining in the Project Fund. The parties intend that the proceeds of the Bonds and the Project itself will be used for such purposes and in such manner so that the interest on the Bonds shall be and remain excludable from gross income for federal income tax purposes. When the Project shall have been completed and such fact shall have been evidenced by a certificate delivered to the Trustee from the President of the Issuer and, at such time, should there be any balance in the Project Fund, such balance shall be applied pursuant to the terms of the Indenture.

appropriately signed by a representative authorized by the Issuer. The Issuer agrees to appoint such authorized Issuer representative with the advice and consent of the College.

#### ARTICLE IV

##### COLLEGE'S OBLIGATIONS HEREUNDER; SECURITY FOR BONDS; OTHER PROVISIONS

Section 4.1. College's Payment Obligations Hereunder. If thirty (30) days prior to any interest payment date, principal payment date or redemption date with respect to payment of the Bonds, as the case may be, the amount on deposit in the Bond Fund is not sufficient to make all payments with respect to the principal of, redemption premium, if any, sinking fund installments for, and interest on the Bonds which are required to be made on such date, the Trustee shall promptly give telephonic notice (to be promptly confirmed in writing) stating the amount of such deficiency to the College, the Manager and the Issuer. Promptly upon receipt of such notice, the Issuer shall pay the amount of such deficiency (hereinafter the "Deficiency") to the Trustee in immediately available funds. In the event the Issuer fails promptly (within 24 hours of receipt of telephonic notice) to make such payment, the College will consider making such payment from sources other than restricted revenues (hereinafter "Non-Restricted Revenues") as shall be sufficient to pay the Deficiency. The College will consider appropriating such funds from Non-Restricted Revenues sources to assist in replenishing that certain Debt Service Reserve Fund (hereinafter the "Debt Service Reserve Fund") described in that certain Trust Indenture (hereinafter the "Indenture") between the Issuer and the Trustee, dated as of November 1, 2010, as shall be sufficient to replenish the Debt Service Reserve Fund up to the level required under the terms of the Indenture. Upon receipt of such funds from the Issuer or College (or from the Manager), the Trustee shall deposit them into the appropriate account in the Bond Fund defined in the Indenture. Such obligations to consider budgeting and appropriating do not create any lien upon or pledge of such Non-Restricted Revenues; nor do they preclude the College from pledging in the future its Non-Restricted Revenues; nor do they require the College to levy and collect any particular Non-Restricted Revenues; nor do they give the holders of the Bonds a claim on the Non-Restricted Revenues as opposed to claims of general creditors of the College.

Anything in this Interlocal Agreement to the contrary notwithstanding, it is understood and agreed that all payments, if any, made by the College hereunder shall be payable from the portion of Non-Restricted Revenues considered for budgeting and appropriating as provided for hereunder, and nothing herein shall be deemed to pledge restricted revenues or Non-Restricted Revenues or to permit or constitute a lease or lien upon any assets of by the College; and no holders of the Bonds or any other person may compel the levy of restricted revenues or Non-Restricted Revenues on real or personal property within the boundaries of the College. Notwithstanding any provisions of this Interlocal Agreement or in the Bonds to the contrary, the College shall never be obligated to maintain or continue any of the activities of the College which generate user service charges, regulatory fees or any Non-Restricted Revenues. Neither this Interlocal Agreement nor the obligations of the College hereunder shall be construed as a pledge of

Section 5.2. Continuing Disclosure Requirements. The College and the Issuer covenant and agrees it will provide (i) certain financial information and operating data relating to the Issuer (the "Operating and Financial Data") annually to the Municipal Securities Rulemaking Board (the "MSRB") and (ii) notices of the occurrence of certain events, if deemed by the Issuer to be material (the "Material Events Notices"), to the MSRB. The Operating and Financial Data and the Material Events Notices may be obtained from the person indicated in a Disclosure Certificate to be executed and delivered in connection with the issuance of the Bonds by the Issuer. This covenant and the covenants in the Disclosure Certificate are made in order to assist the underwriter of the Bonds in complying with Securities and Exchange Commission Rule 15c2-12 (the "Rule"). The Issuer agrees that the primary obligation for complying under the Disclosure Certificate will be that of the Issuer. The Disclosure Certificate shall be in the form prepared by bond counsel in connection with the Bonds and approved by the Issuer, whose approval shall be evidenced by the execution and delivery thereof by the appropriate Issuer officials.

Section 5.3. Amounts Remaining in Bond Fund. It is agreed by the parties hereto that any amounts remaining in the Bond Fund after payment in full of the Bonds in accordance with the provisions of the Resolution and after payment of any fees, charges and expenses of the Trustee shall be paid over by the Trustee to the College or its designee.

Section 5.4. Subsequent Agreements; Sunshine and Open Meetings Laws. It is anticipated that the services of the Issuer, Manager and College herein will be provided for in detail in subsequent agreements. It is understood and agreed, however, that the Issuer shall operate in full compliance with Florida's Sunshine and Open Meetings Laws, Chapters 119 and 286, Florida Statutes.

Section 5.5. Inspections and Audits. The College shall have the right at any time, without notice and without cause, to inspect and audit the books and records of the Issuer and the Issuer shall maintain its books and records so that they are at all times available for that purpose and shall fully cooperate in that regard.

Section 5.6. Severability. In the event any provision of this Interlocal Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 5.7. Execution in Counterparts. This Interlocal Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5.8. Captions. The captions or headings in this Interlocal Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provision hereof.



IN WITNESS WHEREOF, the College and the Issuer have caused this Interlocal Agreement to be executed in their respective corporate names and their respective seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

FLORIDA KEYS COMMUNITY  
COLLEGE

(SEAL)

By: \_\_\_\_\_  
Chairman

Attest:

\_\_\_\_\_  
Witness

FLORIDA KEYS COLLEGE CAMPUS  
FOUNDATION, INC.

(SEAL)

By: \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

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**APPENDIX D**  
**MARKET ANALYSIS**

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## **TEXLA Housing Partners, LLC**

9/19/10

Dr. John Kehoe  
V.P. Finance & Administration  
Florida Keys Community College  
5901 College Road  
Key West, FL 33040

Dear Dr. Kehoe,

I hope this note finds you well. TEXLA has now completed two independent Market Analysis of Income & Expenses associated with the proposed student housing project and merged them into the attached. To that end, we have also reviewed and opined on the proforma produced by FKCC's Financial Advisor, Kirstin Kraig. We feel the project, with the proper support from FKCC, will be a huge success. Once you have had an opportunity to review the data, please don't hesitate to reach out with any questions.

It has been a pleasure working with you on this proposed project. Please do not hesitate to contact me should you need any additional assistance.

Warm regards,

Roger Phillips

## **Rental Income Analysis**

Given Key West's unique real estate condition, there are only two large scale apartment properties on the island, West Isle Apartments and Ocean Walk Apartments. As such, when a prospective student/tenant surveys the market for housing options they are largely limited to these two properties, individual homes/townhomes, or individual rooms with shared living areas.

THP conducted a survey of available properties in each category and has compiled the information in the spreadsheet below. As may be seen the offerings range generally from 1, 2 and 3 bedroom unit types. We were not able to find any evidence of 4-bedroom units that compare directly with the subject proposed project unit type. On a per-bed basis the listings range from a low of \$590 to a high of \$1,375 per bed, per month, with an average of \$913 per month, net of utilities. We will analyze utility costs, lease terms and supply/demand in this section.

## **Comparable Rental Property Rates**

Address	Unit Type	Unit Rent	Rent Per Bed	Utilities by L/L	Utilities by tenant	Lease Term	Deposit	Amenities	Misc
West Isle Apartments	1BR/1BA	\$ 1,375	\$ 1,375	n/a	w,s,e,c,i,t	12 month	\$ 500	Pool, W/D	\$100 for 7-8 mo lease
3333 Duck Ave	2BR/2BA	\$ 1,660	\$ 880	n/a	w,s,e,c,i,t	12 month	\$ 750	Central HVAC	\$75 for 9-11 mo lease
Key West	3BR/2BA	\$ 1,860	\$ 620	n/a	w,s,e,c,i,t	12 month	\$ 1,000		Newly renovated
Ocean Walk Apartments	1BR/1BA	\$ 1,375	\$ 1,375	s.t	w,e,c,i	12 month	\$ 400	Pool, Central HVAC	\$160/mo for shorter
3900 S. Roosevelt	2BR/2BA	\$ 1,410	\$ 705	s.t	w,e,c,i	12 month	\$ 500	W/D on premises	term leases
Key West	3BR/2BA	\$ 1,770	\$ 590	s.t	w,e,c,i	12 month	\$ 1,000	Covered Parking	
805 Virginia St.	1BR/1BA	\$ 1,350	\$ 1,350		w,s,e,c,t,i	12 month	\$ 2,700.00	Central HVAC	
"Old Town"								W/D	
Key West									
900 White St.	2BR/1BA	\$ 1,700	\$ 850		w,s,e,c,t,i	12 month	\$ 1,300	Central HVAC	
"Old Town"								W/D	
Key West									
Key West Golf Resort	2BR/1BA	\$ 1,760	\$ 880		w,s,e,c,t,i	12 month	\$ 3,520	Pool, Fitness	Various units avail
Stock Island								Gated, Deck	Rental Rate is avg
								W/D	
Robyn Lane	2BR/2BA	\$ 1,500	\$ 750		w,s,e,c,t,i	12 month	\$ 500	Gated	
Stock Island									
3735 Cindy St.	1 Room	\$ 700	\$ 700	w,s,e,c,t,i		12 month		TV, DVR, Wireless	Sharing space with
Key West								Internet	One roommate
Naval Air Base									
Key West	2BR/2BA	\$ 1,950	\$ 875	w,s,e,c,t,i		12 month		Central HVAC	



## West Isle Club Apartments

3333 Duck Avenue

Key West, FL

305-294-3124



### Rental Rates:

1 BR/1 BA	From \$1375 per month
2 BR/2 BA	From \$1660 per month; \$830/bed
3 BR/2 BA	From \$1860 per month; \$620/bed

### Amenities:

Pool	Dishwasher	Central HVAC
Parking	Balconies	New Renovated Units
Washer/Dryer in unit	Vaulted ceilings on 2 <sup>nd</sup> Floor	

Tenant Responsibilities: Water, Sewer, Electric, Trash, Cable, and Internet

Lease Term: 12 month; 7-8 month lease term - \$100/mo; 9-11 month lease term - \$75/mo

Fees and Deposits: Application - \$75      Deposit -\$500/\$750/\$1000      Admin Fee: \$100

Website: [www.westisleclub.com](http://www.westisleclub.com)

**Ocean Walk Apartments**  
**3900 S. Roosevelt Blvd.**  
**Key West, FL**  
**305-292-1230**



**Rental Rates:**

1 BR/1 BA      From \$1375 per month  
2 BR/2 BA      From \$1410 per month; \$705/bed  
3 BR/2 BA      From \$1770 per month; \$590/bed

**Amenities:**

Pool	Dishwasher	Laundry on-site
Covered Parking	Tennis Courts	Central HVAC

**Lease Terms:** 12 months; 7-10 month lease term-\$160/mo

**Tenant Responsibilities:** Water, Electric, Cable and Internet

**Fees and Deposits:** App Fee - \$75      Deposit - \$400      Admin Fee - \$350

**Website:** <http://www.equityapartments.com/key-west/key-west/ocean-walk.aspx>

805 Virginia St.  
"Old Town"  
Key West, FL  
305-809-3281



Rental Rate:

1 BR/1 BA      \$1350 per month

Amenities:

Washer/Dryer      Central HVAC

Wood floors

Lease Term:    12 months

Tenant Responsibilities: Water, Sewer, Trash, Electric, Cable/Internet

Fees and Deposits: Deposit – First/Last/Security(\$1350)

900 White St.  
"Old Town"  
Key West, FL  
305-395-9816



Rental Rate:

2 BR/1 BA      \$1700 per month;\$850/bed

Amenities:

Central HVAC      Dishwasher  
Washer/Dryer

Term:              12 months

Tenant Responsibilities: Water, Sewer, Trash, Electric, Cable and Internet

Fees and Deposits: Deposit – First/Security(\$1300)

**Key West Golf Resort  
Stock Island, FL  
305-296-7975**



**Rental Rate:**

2 BR/1BA      \$1575-\$1950 per month;\$788-\$975/bed

**Amenities:**

Dishwasher	Pool	Washer/Dryer	
Fence	Deck	Fitness	Central HVAC

**Lease Term:**    12 months

**Tenant Responsibilities:** Water, Sewer, Trash, Electric, Cable and Internet

**Fees and Deposits:** Deposit – First/Last/Security

905 Robyn Lane  
Stock Island, FL  
305-360-5685



Rental Rate:

2 BR/2 BA      \$1500 per month; \$750/bed

Amenities:

Dishwasher	Washer/Dryer
Wood floors	Parking

Lease Term:    12 months

Tenant Responsibilities: Water, Sewer, Trash, Electric, Cable and Internet

Fees and Deposits: Deposit – First/Security(\$500)



3735 Cindy St.  
Key West, FL  
305-849-1062



Rental Rate:

1 Room            \$700 per month

Amenities:

Washer/Dryer            Shared living areas(1 other person)

Wood floors            Parking

Lease Term:            12 months

Tenant Responsibilities: N/A

Fees and Deposits: Deposit – First/Security

**Naval Air Station  
Perry Court Annex  
White St.  
Key West**



**Rental Rate:**

2 BR/2 BA      \$1950 per month; \$875/bed

**Amenities:**

Dishwasher	Washer/Dryer
Wood floors	Parking

Lease Term:              12 months

Tenant Responsibilities: N/A

Fees and Deposits: Deposit – First/Security

## Utilities

Landlords in the Key West market typically place the financial burden of the various utilities on the tenant. In fact, the majority of the landlords appear to net out ALL utilities including water, sewer, electric, cable, internet and trash pick-up. In order to determine the typical cost of these services a survey from the respective utility providers was conducted by TEXLA utilizing differing unit types in the market.

The following utility providers were contacted to better understand cost associated with these services in the Florida Keys Market:

<b>Water:</b>	Florida Keys Aqueduct Authority for Water	305-296-2454
<b>Sewer &amp; Trash:</b>	City of Key West for Sewer & Trash	305-809-3860
<b>Electric:</b>	Keys Energy	305-295-1000
<b>Cable&amp; Internet:</b>	Comcast	305-924-8677

Based on our findings, we have determined that the **average per bed/per month cost** is as follows:

Water	\$	12
S&T	\$	22
Cable & Internet	\$	24
Electric	\$	92

## Lease Terms

Generally, the rental market prefers 12-month leases. However, some landlords are amenable to shorter term leases and will charge a premium for lease terms less than the preferred 12-month period. An example of this can be found at the two large apartment project offerings, West Isle and Ocean Walk. West Isle charges \$75-100/mo per unit for shorter term leases, while Ocean Walk charges \$160/mo per unit for leases shorter than 12 months. Individual landlords' prices vary from property to property.

## Proposed Rental Rates

According to Student Suites, the Developer of the proposed project, proposed rental rates for the new project are estimated at an average of \$9,000 annually per bed, including all utilities and furnishings. The lease terms can either be 12-months, or Academic Year. At the time of writing this report, the program reportedly consists of 25, 4BR/1BA units containing approximately 700SF (as depicted in the image following provided by Dr. Kehoe from Student Suites' proposal submission on the following page). Our comparable rental properties set in the area can range from a high of \$1375 per month for a 1BR unit to as low as \$590 per month for a bedroom in a 3BR/2BA apartment at Ocean Walk, with an average of \$913 per month. All units prices are based on a 12-month lease and unfurnished units. We could not find any evidence of 4BR units in the market place that directly comparable to the proposed project's units, and are of the opinion that the 3BR units located both at Ocean Walk and West Isle Apartments are most comparable to the proposed unit plan. Three bedroom units at these properties range from \$590-620 per bed, per month net of utilities and unfurnished on 12-month lease terms. When adjusted for utilities (the subject is "all inclusive"), the indicated rental rate range from \$718 - \$770, respectively. As noted previously, the subject property is also to be furnished in the bedroom and living area. The budget from Student Suites provided to THP indicates a budget of \$150,000 for FF&E and we have assumed a monthly budget of an additional \$20 per bed for this amenity. Adding this amount to the above all-inclusive rental rates results in a range of \$738-790 per bed, per month and is broken down below.

	Ocean Walk	West Isle
Base Rent	\$ 590	\$ 620
Water	\$ 12	\$ 12
S&T	\$ -	\$ 22
Cable & Internet	\$ 24	\$ 24
Electric	\$ 92	\$ 92
	\$ 718	\$ 770
Furn	\$ 20	\$ 20
Total	\$ 738	\$ 790

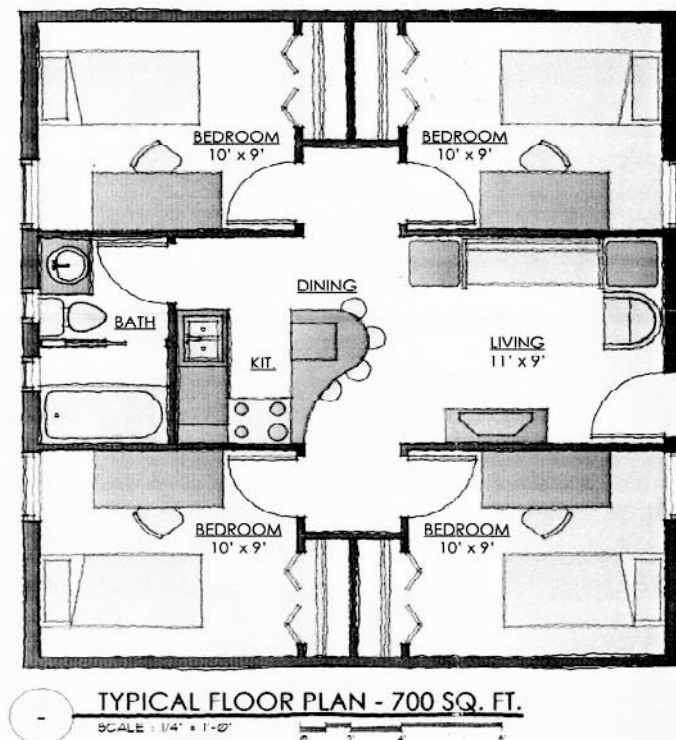
**The subject rental proposed rental rate of \$750 per month on a 12-month lease, with all utilities included appears reasonable.** It is toward the low end of the range as would be expected given the subject is a 4BR unit while, in our opinion, the most comparable units are 3BR. All things equal, rental rates per bed would typically be lower when sharing common spaces with one additional person as would be the case of the 4BR relative to the 3BR.

**Note: We have not made adjustments for age, condition or location of the comparables relative to the subject as we are of the opinion that the any premium for the age and condition of the subject is arguably off-set by the location. Although it is proposed on-campus housing, it is somewhat isolated from convenience stores, shopping centers and other amenities, while the two most comparable properties, in our opinion, Ocean Walk and West Isle, are not. Students that THP talked to expressed concern over this issue. Also, West Isle, which is at the top end of the range, is renovating their units including new kitchen, lighting and bath areas and the pricing reflects these renovations. Therefore, we feel adjustments are not warranted.**

#### **Academic Year Lease Term**

As previously noted the Key West market generally prefers 12-month leases and those shorter in duration are typically charged additional fees. An Academic Year(9-10 months) lease at Ocean Walk or West Isle Apartments will require a premium ranging from \$25-\$53 per bed, per month. **A premium in the range of approximately \$50 per bed, per month would appear reasonable for the subject's Academic Year leases.**

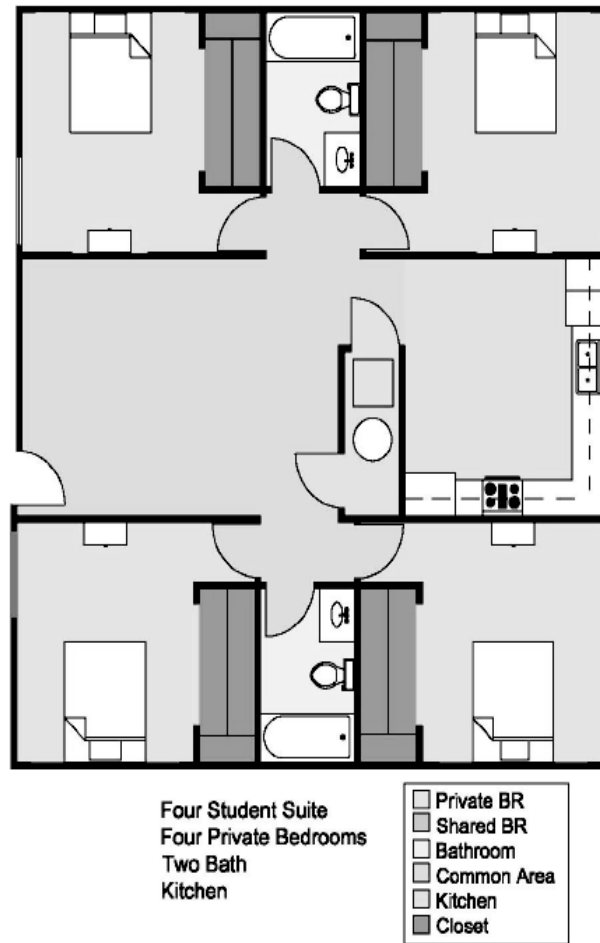
## Proposed Unit Plan



It needs to be noted that the comparable rental properties in the Key West market generally have bed to bath ratios of 1:1 to .66:1 (ie, 1BR/1BA and 3BR/2BA). The subject's proposed 4BR/1BA (.25:1) unit plan is concerning in that 4 people will have to share 1 bathroom. The national trends in on-campus apartment conditions indicate the most desirable condition is 1:1 bed/bath ratios, however, due to price sensitivity there are many markets that have .5:1 (ie, 4BR/2BA or 2BR/1BA) wherein 2 people are sharing a bathroom. Information gathered in discussions with students showed concern for this bed/bath ratio. Therefore, we would strongly encourage Island Living Campus Foundation and the developer to work together to craft a unit plan solution similar to that reflected on the page following. In our opinion, it would also be helpful to create conditions in the bathroom area that would isolate the tub from the water closet or vice versa so as to allow tenants to use multiple fixtures simultaneously. As it is currently designed the tub/water closet/sink are all in the same area.



## Suggested Unit Plan



## **Expense Analysis**

In order to evaluate the expenses of the proposed student housing facility to be located at FKCC, we have utilized many resources including discussion with local providers as well as review of expenses from a 20,000+-bed portfolio of on-campus student housing properties. Also, because insurance in Key West is unlike any condition in the U.S. we felt it appropriate to solicit an insurance quote from a Florida-licensed insurance broker.

The project assumptions herein include which have been provided by the Developer:

- 25 units/100 beds
- 22,000SF of conditioned area, including hallways
- Individual Electrical Meter
- CMU block construction
- 3-story
- Individual PTAC-type HVAC units
- Kitchen includes Range and small Refrigerator
- On-Site laundry

The following expenses were provided by Dick Davis of Student Suites, the project Developer:

<b>EXPENSES</b>		
Utilities		(35,000)
Maintenance		(30,000)
Insurance		(50,000)
Senior Management Fee		-
Miscellaneous		(15,000)
Annual Trustee Fee		(7,500)
<b>TOTAL EXPENSES</b>		<b>(137,500)</b>

\*Property Management to be provided by FKCC

### **Utilities**

We have assumed, based on discussions with the Developer and Dr. Kehoe, that the project will have an “all-inclusive” rental rate and provide electricity, cable/internet, water & sewer, and trash removal for the residents. Expenses including security and landscaping will be provided by FKCC. In order to determine the typical cost of these services a survey from the respective utility providers was conducted.

The following utility providers were contacted to better understand cost associated with these services in Key West:

<b>Water:</b>	Florida Keys Aqueduct Authority for Water	305-296-2454
<b>Sewer &amp; Trash:</b>	City of Key West for Sewer & Trash	305-809-3860
<b>Electric:</b>	Keys Energy	305-295-1000
<b>Cable&amp; Internet:</b>	Comcast	305-453-7585

**Electricity:** For electricity, we have assumed the property will be individually metered and the landlord is anticipated to pay for the service. However, we suggest establishing a per bed “cap” for electricity consumption. This concept is standard industry practice around the country. This will allow for basic electrical service to be provided in the unit and will charge the resident for excess consumption. This will prompt students to be mindful of their HVAC settings and use, lighting, etc. As noted this is standard practice in the industry for student programs and utilized by all major property management firms. “Caps” around the country generally range from \$25 - \$40 per bed. However, given the units are anticipated to be smaller than the average unit type, we would recommend utilizing a \$20/bed cap. Given each unit is a 4-bedroom program this will provide a \$80 per month electrical allowance for the unit which would seem reasonable in light of its overall square footage and number of appliances, etc.. This would equate to an annual charge of \$30,000 for the residential spaces. An additional allowance of \$1,000 per month is estimated for common area lighting and the proposed on-site laundry area. Total annual electrical costs are estimated at **\$36,000**.

#### **Water, Sewer & Trash Removal**

In review of local rental property data, as well as student housing properties around the country, a range of \$16-25/bed is indicated for Water, Sewer and Trash removal costs with the local data being at the higher end of the range. In speaking with a representative from the City of Key West, the base rate quoted per unit is \$56.42. Given each unit will have 4 persons, it would be reasonable to assume that a greater than average consumption of water and sewer. Therefore, we have assumed a per bed rate for W, S & T of \$20/bed, or \$80/month per unit, which equates to an annual burden of **\$24,000**.

#### **Cable/Internet**

The property is to provide cable and internet service in each living room and bedroom. The local provider of this bulk service is Comcast. According to their local representative, the preliminary estimated cost for providing these services to the proposed project is \$30/unit for cable and \$30/unit for internet, which totals approximately **\$18,000** per year.

## Maintenance

Maintenance items would include repair of appliances, light fixtures, HVAC and misc plumbing expenses. Annual turnover expenses such as painting, make-ready and cleaning would be included in this expense line-item. It is worthwhile noting that it is new construction and many major items would have warranties. In terms of maintenance we have reviewed the operating expenses related to maintenance of an on-campus student housing portfolio. The portfolio range is from \$35/bed/year to \$156/bed/year with an average of \$93/bed/year. The developer has projected **\$30,000** per year, or approximately \$300/bed which appears to be adequate. Given the project's overall size is substantially smaller than the portfolio averages one would expect the per bed price to be skewed higher.

## Insurance

Because Key West is such an unusual condition for insurance and construction related issues, we felt it prudent to obtain an insurance quote from a licensed Florida Insurance broker. The broker has populated an application with information provided by Dick Davis and Dr. John Kehoe and has responded with a Property-Casualty and General Liability quote of **\$73,392**, annually. Although we may be able to lower the premium this is a safe allowance at this time.

## Conclusion

The table below outlines the cost estimates obtained through discussions with local providers and analysis of portfolio costs. As may be seen there is a disparity in multiple categories relative to the cost estimated by the developer. TEXLA will assist in any way to help facilitate bridging this gap.

	Developer's Projections	Projections based on Market Analysis of local providers
Electricity	\$ 35,000	\$ 36,000
Cable/Internet		\$ 18,000
Maintenance	\$ 30,000	\$ 30,000
Water, Sewer & Trash	\$ -	\$ 24,000
Insurance	\$ 50,000	\$ 73,392
Misc	\$ 15,000	\$ -
	<b>\$ 130,000</b>	<b>\$ 181,392</b>

## Bond Model provided by Kraig Consulting

Florida Keys College Campus Housing Foundation, Inc.									
Student Housing Revenue Bonds									
Fixed Rate - Tax-Exempt - BBB Rated									
Cash Flow Assumptions									
								As of 8/10/10	
			10-month	Academic Year	Summer				
			Academic Year	Rental Rate	Rental Rate	Summer	Academic Year	Summer	Rental Rate
<b>Rental Assumption</b>	Units	Rentable Beds	Rental Revenues	Per Month	Per Month	Rental Revenues	Occupancy	Occupancy	Escalation
Single Occupancy	48	100	\$8,000	\$800	\$800	\$1,600			
		100	\$800,000			\$160,000	95.0%	95.0%	3%
<b>REVENUE - FISCAL YEAR ENDING 8/1/03</b>									
								\$800,000	
								\$160,000	
<b>TOTAL GROSS POTENTIAL RENTAL REVENUE</b>								\$	960,000
								3% of Revenue	
								3% of Revenue	
<b>SENIOR EXPENSES - FISCAL YEAR ENDING 8/1/03</b>									
					13% Expense Margin			\$	(78,000)
									(30,000)
									(73,392)
					0% of Effective Revenue				-
									-
<b>TOTAL SENIOR EXPENSES</b>								\$	(181,392)
									240,000
Annual Trustee Fee								\$	7,500
Annual Issuer Fee									-
Repair and Replacement Reserve Fund							\$200 per bed		
<b>SUBORDINATE PAYMENTS EXPENSES - FISCAL YEAR ENDING 8/1/03</b>									
<b>Inflation Rate</b>									
Revenues									3.00%
Expenses									3.00%

In terms of the Rental Income estimates TEXLA indicated that the conventional apartment market in the Keys tend to be 12-month lease contracts, while Ms. Kraig's proforma reflects academic year and summer term lease rates. In our opinion, based on observations from numerous college campuses around the U.S. it is reasonable to assume that student leases will also include academic year and summer terms contracts. From a marketing perspective we would encourage pricing academic year contracts based on 10 installments rather than monthly rates. In terms of Income, TEXLA indicated a range of current adjusted rental rates from \$738 to \$790 for the proposed project. Understanding is the project is now slated for August 2011 delivery and utilizing a 3% rent growth factor the rental rate will adjust upward to \$760-814 per month. The bond model's income projections appear reasonable at \$800 per month and are within the range found in the Key West market. In regards to operating expenses, Ms. Kraig has incorporated the updated expense projections from TEXLA's analysis.

**View looking towards Public Safety building across the site of the proposed project site**



**Typical view from subject proposed site**





## **Project Description**



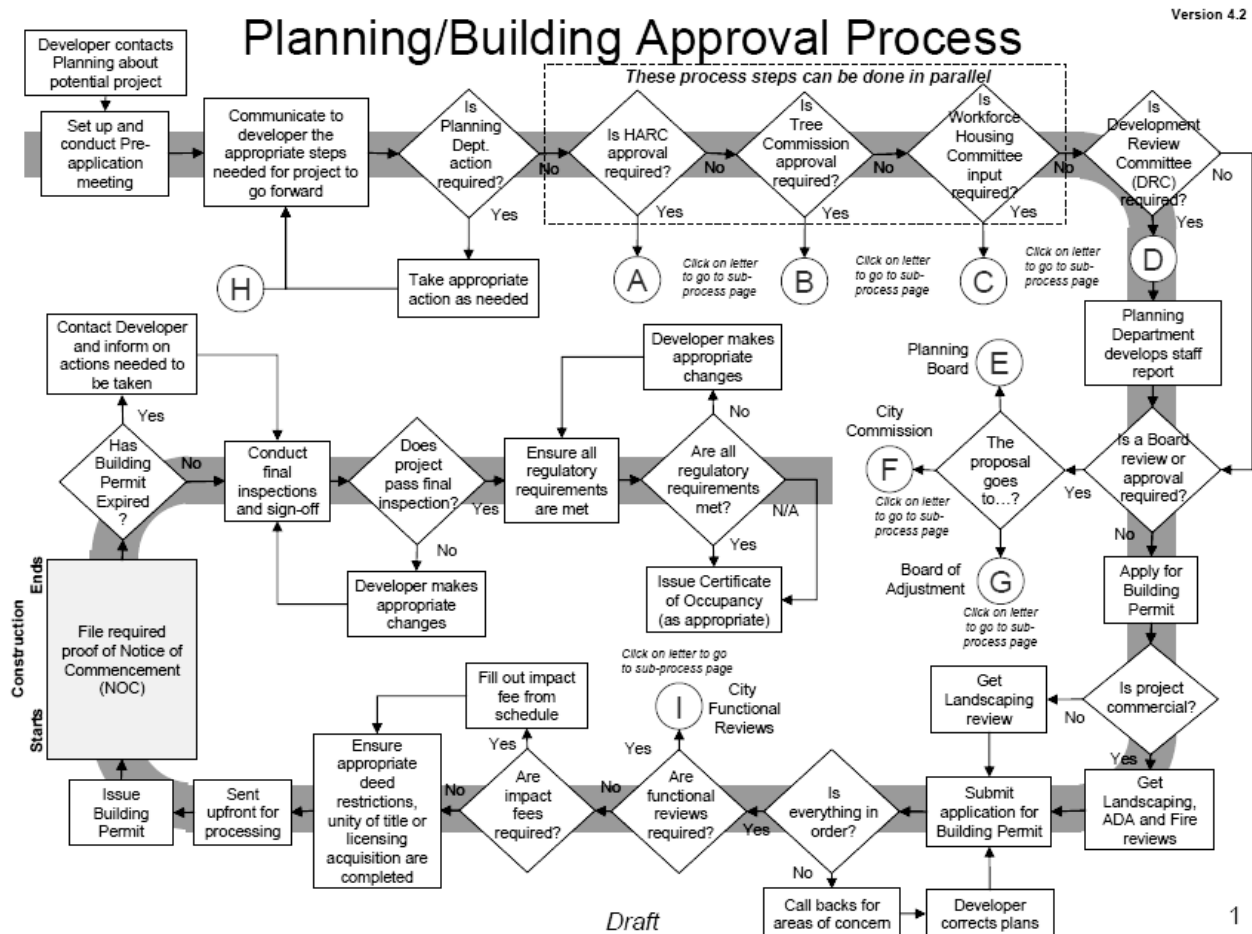
### **New Student Housing Project Description Highlights**

- Number of Beds: 100
- Opening: Fall 2011
- Private Bedrooms
- Fully Furnished
- Small Cooking area with Microwave and Refrigerator
- All Rooms offer Temperature Control
- Reinforced Concrete Masonry Structure to meet hurricane standards
- Laundry Services on Each Floor
- Study Rooms on Each Floor
- Vending on Each Floor
- Ground Floor Larger Meeting/Seminar Room
- Outside BBQ Area with Picnic Tables
- Secured Covered Parking under Building for 40 vehicles/60 bike or motorbikes
- Elevator
- Internet connection for each student
- 2/3 of rooms have Ocean view
- Secured Entry

## Supply

According to the Census Bureau, there are approximately 11,000 housing units in Key West of which approximately 50% are renter-occupied. In speaking with realtors and landlords in the area it appears that occupancies in the area remain relatively high, although some seasonality factors in due to the climate. Summer is lower in demand relative to the winter/spring months which bring the “snowbirds” down to the Keys to escape the winter weather in the Midwest and other areas of the country. In terms of any new supply of rental units there is no real expectation of any additional units coming on-line in the foreseeable future. According to Nicole Malo, a Planner in the City of Key West Planning Department, the area is operating under a Building Permit Allocation System (BPAS) more commonly known as Rate of Growth Ordinance (ROGO) wherein Key West has limitations on growth through building permit management to ensure residential populations do not exceed the hurricane evacuation capacities on the roadways in the Florida Keys. In fact, the only way the Community College was in position to construct the proposed facility was due to the State Legislature passing a resolution in 2008 authorizing FKCC to bypass the BPAS regulation and construct up to a maximum of 100 beds at a maximum height of 45’. Otherwise, the City is currently holding building permits for approximately 100 “affordable housing” units for the entire Key West community. However, due to very high land values in the area, sites that could be considered for redevelopment are priced beyond feasibility. For example, a single family residential lot located on Flagler Ave. contains approximately 10,312SF and is currently priced for sale at \$395,000, which equates to approximately \$1.7M per acre for raw land. (although this is obviously a different use than the subject, it does give some indication as to high land values in the area.) The island is approximately 90% built out and developable land is scarce and the few projects that move forward in the area are re-developments. Due to factors such as high land values, coupled with high construction cost and rental income limitations resulting from the 2009 Median Income of \$69,200 for the area, new “affordable housing” development, as simply stated by John O’Brien of the City of Key West Housing Authority, “won’t even come close to penciling.” This is due to multiple factors including: high property tax rates, Insurance rates, land cost, and City Impact Fees. The primary reasons that the proposed project would be financially feasible is its “\$0” land basis and that it is exempt from real property taxes

The City of Key West approval process is very comprehensive as evidenced in the following flow chart.



## Demand

The proposed project will be available to both full and part time students of the College. According to Linda MacMinn, Coordinator, Technical Reports and Data Analysis, at FKCC, **Fall 2009 total enrollment at the Key West Campus was 1,649, which is an increase of 22% since Fall 2007.** The Full Time figures totaled 429, while the Part Time enrollment was 1,220. It should be noted that there were 893 students enrolled at the Key West Campus for the Summer 09 session, of which 300 were Full Time students and 593 were Part Time. The subject proposed project will contain 100 beds, which would entail a capture rate of 6% of the total enrollment for the fall and 11% for the Summer with a blended rate of approximately 7.25%, which appears reasonable. Detailed enrollment information follows.

## Headcount by Admit Campus

Admit Campus	Fall 2009		Fall 2008		Fall 2007	
	Number	Percent	Number	Percent	Number	Percent
Coral Shores	263	12.5%	182	9.0%	188	11.6%
Key West	1,649	78.3%	1,743	85.7%	1,349	83.5%
Marathon	180	8.5%	104	5.1%	78	4.8%
Virtual Campus	14	0.7%	4	0.2%	0	0.0%
<b>Grand Total</b>	<b>2,106</b>	<b>100.0%</b>	<b>2,033</b>	<b>100.0%</b>	<b>1,615</b>	<b>100.0%</b>

## Headcount by Financial Aid Status

Financial Aid	Fall 2009		Fall 2008		Fall 2007	
	Number	Percent	Number	Percent	Number	Percent
Financial Aid	638	30.3%	477	23.5%	406	25.1%
No Financial Aid	1,468	69.7%	1,556	76.5%	1,209	74.9%
<b>Grand Total</b>	<b>2,106</b>	<b>100.0%</b>	<b>2,033</b>	<b>100.0%</b>	<b>1,615</b>	<b>100.0%</b>

The percentage of students taking Credit classes continues to increase as noted below(Fall 2007 71%; Fall 2009 79%), while Workforce Development declines (Fall 2007 15%; Fall 2009 8%).

#### Headcount by Class Level

Highest Level of Enrollment	Fall 2009		Fall 2008		Fall 2007	
	Number	Percent	Number	Percent	Number	Percent
Credit	1,658	78.7%	1,493	73.4%	1,142	70.7%
Educator Preparation	25	1.2%	30	1.5%	0	0.0%
Post-Secondary Adult Vocational	43	2.0%	46	2.3%	25	1.5%
Workforce Development	167	7.9%	286	14.1%	243	15.0%
Community Instructional	213	10.1%	178	8.8%	205	12.7%
<b>Grand Total</b>	<b>2,106</b>	<b>100.0%</b>	<b>2,033</b>	<b>100.0%</b>	<b>1,615</b>	<b>100.0%</b>

#### Headcount by Full-Time (12 or more credits) and Part-Time Status

Full-Time/ Part-Time	Fall 2009		Fall 2008		Fall 2007	
	Number	Percent	Number	Percent	Number	Percent
Full-Time	503	23.9%	358	17.6%	272	16.8%
Part-Time	1,603	76.1%	1,675	82.4%	1,343	83.2%
<b>Grand Total</b>	<b>2,106</b>	<b>100.0%</b>	<b>2,033</b>	<b>100.0%</b>	<b>1,615</b>	<b>100.0%</b>

#### Fall 09 Headcount by Full-Time and Part Time by Campus

Fall 2009		Coral Shores	Marathon	Key West	Virtual Campus	Grand Total
Full-Time	Number	46	26	429	2	503
	Percent	17.5%	14.4%	26.0%	14.3%	23.9%
Part-Time	Number	217	154	1,220	12	1,603
	Percent	82.5%	85.6%	74.0%	85.7%	76.1%
Total Number		263	180	1,649	14	2,106
Total Percent		100.0%	100.0%	100.0%	100.0%	100.0%

### Summer 09 Headcount by Full-Time and Part Time by Campus

Summer 2009		Coral Shores	Marathon	Key West	Out of District	Virtual Campus	Grand Total
Full-Time	Number	60	35	300	4	4	403
	Percent	54.5%	42.2%	33.6%	66.7%	50.0%	36.6%
Part-Time	Number	50	48	593	2	4	697
	Percent	45.5%	57.8%	66.4%	33.3%	50.0%	63.4%
Total Number		110	83	893	6	8	1,100
Total Percent		100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

**TERM** Summer 09  
**ADMIT CAMPUS** Key West

		Full-Time	Part-Time	Grand Total
<b>1st Time in College DE/EA</b>	Number	34	31	65
	Percent	11.3%	5.2%	7.3%
<b>Continuing</b>	Number	105	113	218
	Percent	35.0%	19.1%	24.4%
<b>First Time in College</b>	Number	30	39	69
	Percent	10.0%	6.6%	7.7%
<b>Non-Degree Seeking</b>	Number	19	312	331
	Percent	6.3%	52.6%	37.1%
<b>Not First Time in College</b>	Number	1	0	1
	Percent	0.3%	0.0%	0.1%
<b>Readmission</b>	Number	1	0	1
	Percent	0.3%	0.0%	0.1%
<b>Transfer</b>	Number	95	91	186
	Percent	31.7%	15.3%	20.8%
<b>Transient</b>	Number	15	7	22
	Percent	5.0%	1.2%	2.5%
<b>Total Number</b>		<b>300</b>	<b>593</b>	<b>893</b>
<b>Total Percent</b>		<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

### Headcount by Age

**AS SEEN BELOW APPROXIMATELY 50% OF THE TOTAL ENROLLMENT FALLS INTO A TRADITIONAL COLLEGE-AGE GROUP**

Age Range	Fall 2009		Fall 2008		Fall 2007	
	Number	Percent	Number	Percent	Number	Percent
<18	333	15.8%	345	17.0%	97	6.0%
18-19	326	15.5%	287	14.1%	220	13.6%
20-21	215	10.2%	193	9.5%	164	10.2%
22-24	190	9.0%	150	7.4%	160	9.9%
25-29	276	13.1%	243	12.0%	196	12.1%
30-34	166	7.9%	155	7.6%	131	8.1%
35-39	126	6.0%	156	7.7%	152	9.4%
40-49	228	10.8%	201	9.9%	209	12.9%
50-64	193	9.2%	244	12.0%	214	13.3%
65+	48	2.3%	43	2.1%	45	2.8%
Not Reported	5	0.2%	16	0.8%	27	1.7%
<b>Grand Total</b>	<b>2,106</b>	<b>100.0%</b>	<b>2,033</b>	<b>100.0%</b>	<b>1,615</b>	<b>100.0%</b>

**Resident vs. Non-Resident Tuition Rates**

In searching for housing options, affordability is paramount for FKCC's students. One area that factors significantly in is whether the student is a resident or non-resident. Below are the cost per credit hour for both resident and non-residents respectively. However, this classification can change resulting in lower tuition cost as explained in detail below.

**Fees per Credit Hour**

Florida Residents (matriculation fee)..... \$89.23

Non-Florida Residents (matriculation fee and tuition)..... \$313.37

**Resident Information and Requirements**

A student's residence classification is determined at the time of his/her admission to Florida Keys Community College. The Florida law regarding residency for tuition purposes allows U.S. citizens and lawful permanent residents to be classified as a Florida resident for tuition purposes if the applicant or the dependent applicant's parent/legal guardian has been a legal resident of the State for at least 12 months preceding the first day of classes of the term for which Florida residency is sought. To qualify as a resident for tuition purposes an applicant or the dependent applicant's parent/legal guardian must have established and maintained legal residence in Florida for at least 12 months prior to the first day of classes of the term for which residency status is sought. A copy of the student's most recent tax return or other documentation may be requested to establish dependence/independence.



In addition, every such applicant is required to make a statement as to his/her length of residence in the state and further establish that his/her presence or dependent's parent/legal guardian presence in the state currently is, and during the requisite 12 month qualifying period was, for the purposes of maintaining a bona fide domicile, rather than a mere temporary residence or abode incidental to enrollment in Florida Keys Community College. Florida Statutes, Section 240.1201 permits certain applicants who do not meet the 12-month legal residence requirements to be classified as Florida residents for tuition purposes. These exceptional categories are as follows:

1. Dependent children residing with a legal resident adult relative other than the parent for at least 5 years.
2. Persons married to legal Florida residents and who intend to make Florida their permanent home, and who relinquish their legal ties to any other state.
3. Persons who were enrolled as Florida residents for tuition purposes at a Florida public institution of higher education, but who abandon Florida residency and then re-enroll in Florida within 12 months of the abandonment.
4. Active duty members of the armed services of the United States residing or stationed in Florida (and spouse/dependent children) or military personnel not stationed in Florida whose home of record or state of legal residence certificate, DD Form 2058, is Florida (and spouse/dependent children).
5. Active duty members of the armed services of the United States and their spouses attending a public community college or university within 50 miles of the military establishment where they are stationed, if such military establishment is within a county contiguous to Florida.
6. U.S. Citizens living on the Isthmus of Panama, who have completed 12 consecutive months of college work at the Florida State University Panama Canal Branch, and their spouses and dependent children.
7. Full time instructional and administrative personnel employed by the State public school system, community colleges and institutions of higher education (and spouses/dependent children).
8. Students from Latin America and the Caribbean who receive scholarships from the federal or state government. The student must attend, on a full-time basis, a Florida institution of higher education.
9. Full-time employees of state agencies or political subdivisions of the state when the student fees are paid by the state agency or political subdivision for the purpose of job related law enforcement or corrections training.
10. Qualified beneficiaries under the Florida Pre-Paid Postsecondary Expense Program per Florida Statute, s.240.551(7)(a).
11. A dependent child whose parents are divorced, separated, or otherwise living apart, will be considered a resident for tuition purposes if either parent is a legal resident of Florida, regardless of which parent claims the minor for tax purposes.

12. Active duty members of the Canadian military residing or stationed in this state under the North American Air Defense (NORAD) agreement, and their spouses and dependent children, attending a public community college or university within 50 miles of the military establishment where they are stationed.

The law allows non-U.S. Citizens such as lawful permanent residents, temporary permanent residents, asylees, parolees, and refugees who have applied for and been approved for such status and who otherwise meet the 12 month legal residence requirements, to be eligible to establish Florida residency for tuition purposes.

### **Zoning**

Because the proposed project will be developed on land owned by FKCC, zoning rules and regulations do not apply. However, if zoning were to apply the subject would likely fall into High Density Residential. The zoning regulations and City of Key West Zoning Map follow. Outside the Historic "Old Town" District, the only area currently zoned for such a development is in proximity of Ocean Walk Apartments previously discussed. Key West is currently prohibited for rezoning any parcel of land.

### **High Density Residential District (HDR)**

#### **Sec. 122-326. Intent.**

The high density residential district (HDR) implements comprehensive plan future land use map policies for areas designated "HDR." The high density district shall only be approved for land accommodating high density residential development adequately supported by public services and facilities and compatible with existing and anticipated future land uses. Supportive community facilities and accessory land uses may be located within the HDR district. This district shall not accommodate transient lodging and guesthomes, commercial uses or freestanding office buildings. However, accessory uses, including approved home occupations, conducted within the residential structures are permitted so long as all such accessory uses are customarily incidental to and subordinate to the residential use. Other customary accessory uses and community facilities may also be located in the HDR district. (Ord. No. 97-10, § 1(2-5.2.5(A)), 7-3-1997)

#### **Sec. 122-327. Uses permitted.**

Uses permitted in the high density residential district (HDR) are as follows:

- (1) Single-family and two-family residential dwellings.
  - (2) Multiple-family residential dwellings.
  - (3) Group homes with less than or equal to six residents as provided in section 122-1246.
- (Ord. No. 97-10, § 1(2-5.2.5(B)), 7-3-1997)

#### **Sec. 122-328. Conditional uses.**

Conditional uses in the high density residential district (HDR) are as follows:

- (1) Group homes with seven to 14 residents as provided in section 122-1246.

- (2) Educational institutions and day care.
  - (3) Nursing homes, rest homes and convalescent homes.
  - (4) Parks and recreation, active and passive.
  - (5) Places of worship.
  - (6) Protective services.
  - (7) Public and private utilities.
  - (8) Parking lots and facilities.
- (Ord. No. 97-10, § 1(2-5.2.5(C)), 7-3-1997)

Sec. 122-329. Prohibited uses.

In the high density residential district (HDR), all uses not specifically or provisionally provided for in this subdivision are prohibited.

(Ord. No. 97-10, § 1(2-5.2.5(D)), 7-3-1997)

Sec. 122-330. Dimensional requirements.

The dimensional requirements in the high density residential district (HDR) are as follows:

- (1) Maximum density: 22 dwelling units per acre (22 du/acre).
- (2) Maximum floor area ratio: not applicable.
- (3) Maximum height: 40 feet.
- (4) Maximum lot coverage:
  - a. Maximum building coverage: 40 percent.
  - b. Maximum impervious surface ratio: 60 percent.
- (5) Minimum lot size: 1 acre.
  - a. Minimum width:
    - 1. Single-family and two-family: 70 feet or the average lot width on developed lots within 200 feet of the subject lot but not less than 50 feet.
    - 2. Multiple-family and community facilities: 80 feet.
  - b. Minimum depth: 100 feet.
- (6) Minimum setbacks:
  - a. Single-family and two-family:
    - 1. Front: 30 feet or the average depth of front yards within 100 feet of the subject lot but not less than 20 feet.
    - 2. Side: 7 feet.
    - 3. Rear: 20 feet or 15 feet when abutting an alley.
    - 4. Street side: 10 feet.
  - b. Multiple-family and community facilities:
    - 1. Front: 30 feet.
    - 2. Side: 25 feet.
    - 3. Rear: 25 feet or 20 feet when abutting an alley.
    - 4. Street side: 25 feet.

(Ord. No. 97-10, § 1(2-5.2.5(E)), 7-3-1997)

Secs. 122-331--122-355. Reserved.

Subdivision VI. High Density Residential District (HDR)

Sec. 122-326. Intent.

The high density residential district (HDR) implements comprehensive plan future land use map policies for areas designated "HDR." The high density district shall only be approved for land accommodating high density residential development adequately supported by public services and facilities and compatible with existing and anticipated future land uses. Supportive community facilities and accessory land uses may be located within the HDR district. This district shall not accommodate transient lodging and guesthomes, commercial uses or freestanding office buildings. However, accessory uses, including approved home occupations, conducted within the residential structures are permitted so long as all such accessory uses are customarily incidental to and subordinate to the residential use. Other customary accessory uses and community facilities may also be located in the HDR district. (Ord. No. 97-10, § 1(2-5.2.5(A)), 7-3-1997)

Sec. 122-327. Uses permitted.

Uses permitted in the high density residential district (HDR) are as follows:

- (1) Single-family and two-family residential dwellings.
  - (2) Multiple-family residential dwellings.
  - (3) Group homes with less than or equal to six residents as provided in section 122-1246.
- (Ord. No. 97-10, § 1(2-5.2.5(B)), 7-3-1997)

Sec. 122-328. Conditional uses.

Conditional uses in the high density residential district (HDR) are as follows:

- (1) Group homes with seven to 14 residents as provided in section 122-1246.
  - (2) Educational institutions and day care.
  - (3) Nursing homes, rest homes and convalescent homes.
  - (4) Parks and recreation, active and passive.
  - (5) Places of worship.
  - (6) Protective services.
  - (7) Public and private utilities.
  - (8) Parking lots and facilities.
- (Ord. No. 97-10, § 1(2-5.2.5(C)), 7-3-1997)

Sec. 122-329. Prohibited uses.

In the high density residential district (HDR), all uses not specifically or provisionally provided for in this subdivision are prohibited.

(Ord. No. 97-10, § 1(2-5.2.5(D)), 7-3-1997)

Sec. 122-330. Dimensional requirements.

The dimensional requirements in the high density residential district (HDR) are as follows:

- (1) Maximum density: 22 dwelling units per acre (22 du/acre).
- (2) Maximum floor area ratio: not applicable.
- (3) Maximum height: 40 feet.
- (4) Maximum lot coverage:
  - a. Maximum building coverage: 40 percent.
  - b. Maximum impervious surface ratio: 60 percent.
- (5) Minimum lot size: 1 acre.
  - a. Minimum width:

1. Single-family and two-family: 70 feet or the average lot width on developed lots within 200 feet of the subject lot but not less than 50 feet.
  2. Multiple-family and community facilities: 80 feet.
  - b. Minimum depth: 100 feet.
  - (6) Minimum setbacks:
    - a. Single-family and two-family:
      1. Front: 30 feet or the average depth of front yards within 100 feet of the subject lot but not less than 20 feet.
      2. Side: 7 feet.
      3. Rear: 20 feet or 15 feet when abutting an alley.
      4. Street side: 10 feet.
    - b. Multiple-family and community facilities:
      1. Front: 30 feet.
      2. Side: 25 feet.
      3. Rear: 25 feet or 20 feet when abutting an alley.
      4. Street side: 25 feet.
- (Ord. No. 97-10, § 1(2-5.2.5(E)), 7-3-1997)

## EXECUTIVE SUMMARY

Key West is a very dynamic place in terms of its real estate. Perhaps one of the most dynamic in the U.S. given the limited availability of land. As a result land values are extremely high. Also, given the fact that there is limited ingress/egress from the Keys and Hurricane evacuation concerns to the mainland limit the amount of new development in Key West. In fact, other than the units approved for FKCC the only remaining units currently developable in Key West are ‘affordable’ which aren’t currently financially feasible and quite honestly may never be. The fact that FKCC is in position to provide the land for the proposed project at a \$0 basis cannot be underappreciated. This, coupled with the fact that the property is to be free of property tax assessments, is arguably the only way this project would be financially feasible. That being said, TEXLA has now had the opportunity to independently review the Key West rental market as well as the proposed income and expenses for the project. We feel that the supply/demand metrics are sufficient at the proposed pricing to support construction of the 100-bed project. With proper marketing support from FKCC and professional oversight this project should be a success.

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## **APPENDIX E**

### **FINDINGS, OPINION AND CONCLUSIONS OF THE PHASE I ENVIRONMENTAL SITE ASSESSMENT**

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# **PHASE I ENVIRONMENTAL SITE ASSESSMENT**

**Florida Keys Community College  
5801 College Rd, Stock Island  
City of Key West, Monroe County, FL**

**Prepared by:**



Planning  
Ecological  
Environmental  
Communications  
CONSULTING SERVICES

**Key West \* Miami \* Ft. Myers  
[www.swcinc.net](http://www.swcinc.net)**

**May 25, 2010**



## 8.0 Findings

The following summarizes the status of potential sources of contamination on the subject property and adjacent properties:

- Florida Keys Community College appears to be a well maintained and orderly teaching facility as follows—
  - vessel engine work is conducted on paved surfaces;
  - all containers are properly labeled and stored;
  - only minor vessel repair, maintenance, and propulsion instruction is conducted on site; and
  - the property is maintained in a clean and orderly fashion, facilitating prevention of any activities that could cause contamination.
- The adjoining property to the west has no visually-apparent contamination issues and has no record of contamination in environmental databases.
- The adjoining property across the street to the south, Lower Keys Medical Center, had a diesel storage tank discharge in 1999. The state cleanup score of 8 as of March 1, 2002 indicates minimal risk to the subject property at this time. Storage tanks currently in use on the property are in compliance as of April 22, 2010.

## 9.0 Opinion

A Recognized Environmental Condition (REC) is found in the form of storage, use and disposal of oil and other petroleum products and fluids associated with vessel engine service and repair in the FKCC marine technology department. This REC is being managed compliant with legal requirements and no sign or record of any contamination resulting from this facility was found. According to the Standard Definitions of Environmental Risk (attachment B), the site has a LOW potential for contamination.

Other potential sources of contamination from adjacent properties have a minimal potential for impact to the subject parcel.

## 10.0 Conclusions

SWC has performed a Phase I Environmental Site Assessment, in conformance with the scope and limitations of ASTM Practice E 1527-05, of the Florida Keys Community College property, City of Key West, Monroe County, FL. Any exceptions to, or deletions from, this practice are described in Section 11.0 of this report. This assessment has revealed a REC on the property that is being correctly managed.

**APPENDIX F**  
**FINANCIAL PRO FORMA**

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October 30, 2010

Mr. James Swan  
 Bergen Capital  
 777 Terrace Avenue, Suite 601  
 Hasbrouck Heights, NJ 07604

**Re: Florida Keys College Campus Foundation, Inc. student housing bond financing**

Dear Mr. Swan:

This letter provides a summary of the financial pro formas that Kraig Consulting has prepared in connection with the above referenced unrated, tax-exempt bond financing.

Fiscal Year Ending July 31	2012	2013	2014	2015	2016
<b>REVENUE</b>					
Potential Academic Year Rental Revenue	800,000	824,000	848,720	874,182	900,407
Potential Summer Rental Revenue	160,000	164,800	169,744	174,836	180,081
<b>GROSS POTENTIAL RENTAL REVENUE</b>	960,000	988,800	1,018,464	1,049,018	1,080,488
Academic Year Miscellaneous Revenue	24,000	24,720	25,462	26,225	27,012
Summer Miscellaneous Revenue	4,800	4,944	5,092	5,245	5,402
Academic Year Vacancy Loss	(41,200)	(42,436)	(43,709)	(45,020)	(46,371)
Summer Vacancy Loss	(8,240)	(8,487)	(8,742)	(9,004)	(9,274)
<b>GROSS EFFECTIVE REVENUE</b>	939,360	967,541	996,567	1,026,464	1,057,258
<b>EXPENSES</b>					
Utilities	(78,000)	(80,340)	(82,750)	(85,233)	(87,790)
Maintenance	(30,000)	(30,900)	(31,827)	(32,782)	(33,765)
Insurance	(73,392)	(75,594)	(77,862)	(80,197)	(82,603)
Senior Management Fee	-	-	-	-	-
Miscellaneous	-	-	-	-	-
Annual Trustee Fee	(1,500)	(1,500)	(1,500)	(1,500)	(1,500)
<b>TOTAL EXPENSES</b>	(182,892)	(188,334)	(193,939)	(199,712)	(205,658)
<b>Net Operating Income</b>	756,468	779,207	802,628	826,752	851,600
Debt Service Reserve Fund Earnings	11,749	23,497	23,497	23,497	23,497
<b>NET OPERATING INCOME BEFORE DEBT</b>	768,217	802,704	826,126	850,249	875,097

DEBT SERVICE					
Annual Debt Service	581,350	671,350	670,050	668,400	666,400
Capitalized Interest	(242,229)	-	-	-	-
<b>Total Senior Net Debt Service</b>	<b>339,121</b>	<b>671,350</b>	<b>670,050</b>	<b>668,400</b>	<b>666,400</b>
<b>Senior Debt Service Coverage</b>	<b>2.27x</b>	<b>1.20x</b>	<b>1.23x</b>	<b>1.27x</b>	<b>1.31x</b>
<b>NET CASH FLOW AFTER SENIOR DEBT</b>	<b>429,096</b>	<b>131,354</b>	<b>156,076</b>	<b>181,849</b>	<b>208,697</b>
Days Cash on Hand Requirement	(45,723)	(1,360)	(1,401)	(1,443)	(1,487)
Repair and Replacement Reserve Fund	(20,000)	(20,600)	(21,218)	(21,855)	(22,510)
<b>NET CASH FLOW AFTER ALL DEBT AND EXPENSES</b>	<b>363,373</b>	<b>109,394</b>	<b>133,456</b>	<b>158,552</b>	<b>184,700</b>

### Assumptions:

- \$800 monthly rental rates
- 12-month contracts
- 95% occupancy
- 3% annual inflation rate; both revenues and expenses
- \$200 per bed annual repair and replacement reserve deposit

### Breakeven occupancy:

Year one = 52%

Year two = 82% (declining thereafter)

Please give me a call with any additional questions regarding the conclusions or underlying assumptions pertaining to the pro formas.

Sincerely,



Kirstin Kraig  
President



## **APPENDIX G**

### **FORM OF OPINION OF BOND COUNSEL**

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MITCHEL P. HOUSE, JR.  
ED S. SELL, III  
JOHN A. DRAUGHON, SR.  
R. CHIX MILLER  
JEFFREY B. HANSON  
JON R. HAWK  
JULIA H. MAGDA  
BLAKE EDWIN LISENBY  
AIMEE J. HALL  
M. DEVLIN COOPER  
CHRIS E. MIRANDA  
SUSANNA GWEN PATTERSON

# SELL & MELTON, L.L.P.

ATTORNEYS AT LAW  
A LIMITED LIABILITY PARTNERSHIP  
FOURTEENTH FLOOR  
577 MULBERRY STREET  
MACON, GEORGIA 31201

RCMILLER@SELL-MELTON.COM  
DIRECT LINE (478) 464-5342  
DIRECT FAX (478) 464-5382

E. S. SELL, JR.  
1917-2007  
ANDREW W. MCKENNA  
1918-1981  
DOYE E. GREEN, SR.  
1932-2007

---

OF COUNSEL  
JOHN D. COMER  
BUCKNER F. MELTON  
JOSEPH W. POPPER, JR.

MAILING ADDRESS:  
POST OFFICE BOX 229  
MACON, GEORGIA 31202-0229

TELEPHONE (478) 746-8521  
FAX (478) 745-6426  
WEBSITE: WWW.SELL-MELTON.COM

November 12, 2010

Florida Keys College Campus Foundation, Inc.  
Florida Keys Community College  
5901 West College Road  
Key West, Florida 33040

William N. DeVane, Jr., Esq.  
DeVane & Dorl, P.A.  
5701 Overseas Highway, Suite 12  
Marathon, Florida 33050-2784

Zions First National Bank  
1001 17<sup>th</sup> Street, Suite 850  
Denver, Colorado 80202

RE: \$8,305,000 Florida Keys College Campus Foundation, Inc. Senior Leasehold  
Industrial Development Revenue Bonds (Florida Keys Community College Project),  
Series 2010

Gentlemen:

We have acted as Bond Counsel in connection with the issuance of the Florida Keys College Campus Foundation, Inc., Senior Leasehold Industrial Development Revenue Bond (Florida Keys Community College Project, Series 2010, in the aggregate principal amount of up to \$8,305,000 (the "Bonds"), and in that regard, we have examined (a) the Constitution and laws of the State of Florida, specifically Florida Statutes Annotated, 159.25 et seq., as amended (collectively, the "Act"); (b) the Bond Resolution of the Florida Keys College Campus Foundation, Inc. (the "Issuer"), adopted October 8, 2010, and supplemented on November 8, 2010, with respect to the issuance of the Bonds (the "Resolution"); (c) the Trust Indenture, dated as of November 1, 2010 (the "Indenture") between the Issuer and Zions First National Bank (the "Trustee"); (d) the Interlocal Agreement, dated as of November 1, 2010 (the "Interlocal Agreement"), between the Issuer and the Florida Keys Community College (the "College"), relating to the issuance of the Bonds, and such other documents, certificates and proceedings as we deemed necessary or appropriate to form the opinion hereinafter expressed.

The Bonds, which mature on November 1, 2042, are being issued in the aggregate principal face amount of up to \$8,305,000, dated November 12, 2010, at an original issue discount of

November 12, 2010

Page 2

\$166,100 and bear interest from date at the rate of 7.00% per annum, payable semi-annually on the first (1st) day of each May and November (each an "Interest Payment Date"), beginning on May 1, 2011, until the final maturity of the Bonds.

The Bonds are being issued to (1) provide funds to the Issuer to finance the cost of the acquisition of a leasehold interest in approximately .53 acres of land located on the campus of the College in Monroe County, Florida, (2) the construction thereon of the Facility (3) the funding of various trust funds with the Trustee under this Indenture and (4) the payment of the costs of issuance of the Bonds (hereinafter, collectively, the "Project").

The College and the Issuer have entered into the Interlocal Agreement under which the Issuer has agreed to issue the Bonds to finance the Project, and the College has agreed that if after having received sufficient notice as specified in the Interlocal Agreement that the amount on deposit in the Bond Fund is not sufficient to make all payments with respect to the principal of, redemption premium, if any, sinking fund installments for, and interest on the Bonds which are required to be made (the "Deficiency"), the College has agreed that it shall use its best efforts to make such payment from sources other than ad valorem taxes as shall be sufficient to pay the Deficiency.

The Issuer has represented and covenanted in the Resolution that it will not, subsequent to the date hereof, intentionally use any portion of the proceeds of the Bonds to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except as may be otherwise permitted by Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and that it will comply with the arbitrage rebate requirements, if any, of Section 148 of the Code and will not take any actions which would cause the interest on the Bonds to be includable in the gross income of the registered owner of the Bonds for federal income tax purposes. The inaccuracy of any such representations or the failure of the Issuer to comply with any of such covenants may cause interest on the Bonds to become subject to federal income taxation retroactive to the date of issuance of the Bonds.

Based upon the foregoing, we are of the opinion that as of this date:

(a) The Issuer is a not-for-profit organization organized and existing under the laws of the State of Florida.

(b) The Bonds have been duly authorized, executed and delivered on behalf of the Issuer and constitute the legal, valid and binding obligation of the Issuer, enforceable in accordance with their terms.

(c) The Bonds are a limited obligations of the Issuer payable solely from the payments derived from the Issuer's operation of the Facility and from revenues (if any) derived from the Interlocal Agreement as more fully set forth in the Resolution. Neither the State of Florida nor any political subdivision thereof, including the College, is obligated to pay the principal of the Bonds or the interest thereon or other costs incident thereto except from the Issuer's operation of the Facility and from revenues (if any) derived from the Interlocal Agreement.

(d) The Indenture has been duly authorized, executed and delivered on behalf of the Issuer and the Trustee and constitutes the legal, valid and binding obligation of the Issuer and Trustee, enforceable in accordance with its terms.

(e) The Leasehold Mortgage and Security Agreement, dated as of October 1, 2010 (the “Mortgage”) has been duly authorized, executed and delivered on behalf of the Issuer and constitutes the legal, valid and binding obligation of the Issuer enforceable in accordance with its terms.

(f) The Interlocal Agreement has been duly authorized, executed and delivered on behalf of the Issuer and the College and constitutes the legal, valid and binding obligation of the Issuer and the College, enforceable in accordance with its terms.

(g) Pursuant to the Resolution, the payments to be received by the Issuer under the Interlocal Agreement have been pledged to secure the payment of the principal of, redemption premium (if any), and interest on the Bonds.

(h) Assuming the accuracy of the factual representations made by the Issuer and the continued compliance by the Issuer with its covenants regarding federal tax law, the interest on the Bonds is, under the provisions of the Code as presently construed, not includable in the gross income of the registered owner of the Bonds for federal income tax purposes and is not a specific preference item for purposes of the corporate or individual alternative minimum taxes; however, with respect to corporations (as defined for federal income tax purposes), however, such interest is taken into account in determining adjusted current earnings.

(i) Ownership of the Bonds may result in collateral Federal income tax consequences to certain taxpayers, including, without limitation, property and casualty insurance companies, individual recipients of Social Security or Railroad Retirement benefits, foreign corporations engaged in a trade or business in the United States and taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry the Bonds. In addition, for purposes of the Superfund Amendments and Reauthorization Act of 1986, “alternative minimum taxable income” includes interest on all tax-exempt bonds to the same extent and in the same manner as in the Code.

(j) Passive investment income, including interest on the Bonds, may be subject to Federal income taxation under Section 1375 of the Code for Subchapter S corporations that have Subchapter S earnings and profits at the cost of the taxable year, if greater than 25% of the gross receipts of such Subchapter S corporation is passive investment income; and the receipt of interest on the Bonds may cause disallowance of the earned income credit under Section 32 of the Code.

(k) There may be additional modifications or amendments to the Code or other additional proposals, such as the Superfund Act described above, that, if enacted into law, would cause interest on the Bonds to be subject to Federal income tax, and there can accordingly be no

assurance that such modifications, amendments for proposals will not adversely affect the exclusion from gross income for Federal income tax purposes of interest on the Bonds.

(l) Prospective owners of the Bonds should consult with their own tax advisors with respect to the foregoing and other tax consequences of owning the Bonds. Other than this opinion with respect to the exclusion of interest on the Bonds from gross income pursuant to Section 103 of the Code for Federal income tax purposes described above, we express no opinion with regard to any other Federal tax consequences of owning the Bonds. It should be noted that we express no opinion with respect to any exemption from any taxes imposed by the State of Florida or any other state on the Bonds or the interest or income thereon.

(m) We express no opinion regarding other federal income tax consequences caused by the receipt or accrual of interest on the Bonds.

(n) The rights of holders of the Bonds and the enforceability thereof and of the Resolution and the Indenture, Leasehold Mortgage and Security Agreement and Interlocal Agreement may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the enforcement of creditors' rights generally or principles or equity applicable to the availability of specific performance or other equitable relief.

Very truly yours,

SELL & MELTON, L.L.P.

By: \_\_\_\_\_  
A Partner





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