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**MEMORANDUM OF LEASE AND NOTICE OF OPTION**

**by and between**

**NEW COLLEGE OF FLORIDA PROPERTY CORPORATION**

**as Lessor**

**and**

**NEW COLLEGE OF FLORIDA DEVELOPMENT CORPORATION**

**as Lessee**

**Dated as of April 1, 2006**

## MEMORANDUM OF LEASE AND NOTICE OF OPTION

THIS MEMORANDUM OF LEASE AND NOTICE OF OPTION, is made and entered into as of March 1, 2006 (the "Lease Agreement"), by and between NEW COLLEGE OF FLORIDA PROPERTY CORPORATION, a single-purpose, not for profit corporation organized and existing under the laws of the State of Florida, as lessor (the "Property Corporation"), and the NEW COLLEGE OF FLORIDA DEVELOPMENT CORPORATION a direct support organization of the New College of Florida organized and existing under the laws of the State of Florida, as lessee (the "Development Corporation" or "Lessee");

### WITNESSETH:

The Property Corporation, in consideration of the mutual covenants contained in that certain Master Lease Purchase Agreement between the Development Corporation and the Property Corporation dated as of April 1, 2006 (the Lease Agreement") and for other valuable consideration, hereby leases to the Lessee, the Property Corporation's right, title and interest in and to the leasehold estate (created under that certain Ground Lease Agreement dated as of April 1, 2006 between the New College of Florida and the Property Corporation, as ground lessee), in the real property described in Exhibit A, attached hereto and made a part hereof, together with all buildings and other improvements hereinafter located thereon (hereinafter referred to as the Project), for a term commencing on the date hereof and ending on July 1, 2036 (unless the term is earlier terminated as provided in the Lease Agreement), on the terms, provisions, covenants, agreements, and conditions contained in the Lease Agreement, including but not limited to the provisions recited herein below:

**Section 3.02 RIGHT OF ENTRY.** In order to enable the Corporation to carry out the terms of this Master Lease, to provide for the acquisition, construction and installation of the Projects and to facilitate the exercise of remedies upon an Event of Default hereunder, the Lessee hereby grants a right of entry to the Corporation, its agents and assignees, including, without limitation, the Trustee, and, subject to the provisions of Section 7.03 hereof, at reasonable times and upon reasonable notice, to each of the Projects. The Lessee represents that it is empowered to grant such right of entry to the Trustee and the Corporation.

**Section 4.01 LEASE OF PROJECTS.** In consideration of payment by the Lessee to the Corporation, or its assignee, of the Lease Payments and for other valuable consideration, the Corporation hereby leases from time to time each Project to the Lessee upon the terms and conditions contained herein, as modified by the Lease Schedule relating to such Project. The Lessee may modify each Project or may substitute or dispose of components or portions of a Project as provided in Sections 3.03(b), 5.13 and 5.14 hereof

**Section 4.02 TERM OF AGREEMENT.** Effective as of the Commencement Date described in the Lease Schedule relating to each Project, the Property Corporation agrees to rent and lease to the Lessee and the Lessee agrees to rent and lease from the Property Corporation each such Project for the Lease Term.

**Section 4.06 OPTIONAL PREPAYMENT; DEFEASANCE** (a) The Lessee shall have the option, so long as no Event of Default hereunder has occurred and is continuing, from any moneys then available for such purpose, on any Optional Prepayment Date for the Series of Certificates relating to a Project, to prepay all or a portion of the Basic Rent relating to such Project or Group within such Project upon not less than forty five (45) days written notice given prior to such Optional Prepayment Date to the Trustee accompanied by the deposit of the amount of such prepaid Basic Rent with the Trustee not less than thirty five (35) days prior to the applicable Optional Prepayment Date. Optional prepayments made pursuant to this Section 4.06 may be allocated to a particular Project, or any Group of leased property within a Project. Any prepayment notice delivered pursuant to this Section 4.06(a) shall state (i) that the Lessee is exercising its right of prepayment pursuant to Section 4.06(a) of the Master Lease, (ii) the amount of such prepayment and the Lease Schedule or Lease Schedules to which it pertains, (iii) the Optional Prepayment Date to which such prepayment applies, (iv) the amount of prepayment applicable to a Project or Group within a Project and, therefore, to the Series of Certificates and maturities of such Series relating thereto, and (v) that the deposit with the Trustee of such prepaid amount constitutes an irrevocable option of the Lessee to prepay Basic Rent in the amount of such prepayment. Each prepayment shall be in an amount equal to a principal amount of Certificates (in denominations of \$5,000 or any whole multiple thereof in the case of Current Interest Certificates and in denominations of \$25,000 maturity value and any whole multiples thereof in the case of Capital Appreciation Certificates) to be redeemed on such Optional Prepayment Date, plus the Prepayment Premium, if any, applicable to a redemption of Certificates on the Optional Prepayment Date designated by the Lessee in such notice of prepayment, all as provided in the Master Trust. Interest on Certificates to be redeemed pursuant to an optional prepayment under this Section accrued to the Optional Prepayment Date set forth in the notice of prepayment above shall be paid by the Trustee from moneys on deposit in the account of the Prepayment Fund and the subaccount of the Interest Account which are pledged to the payment of such Certificates and from Pledged Revenues provided by the Lessee.

(b) In the event of a prepayment, in part, of Basic Rent Payments for a Project or Group within a Project, such Basic Rent Payments provided in the Lease Schedule relating thereto shall be adjusted downward by the Trustee to reflect the reduction in the Principal Component and Interest Component of the remaining Basic Rent resulting from such prepayment. Such adjustment shall be done in such manner as to match remaining payments of Basic Rent provided in such Lease Schedule with principal and interest coming due on Certificates which remain Outstanding related thereto.

(c) So long as no Event of Default has occurred and is continuing, the Lessee may secure the payment of Basic Rent for a Project or Group within a Project by a deposit with the Trustee, as provided in Section 12.01 of the Master Trust, of either (i) an amount of moneys which is sufficient to pay such Basic Rent, including the Principal Component, Interest Component and Prepayment Premium, if any, on the Basic Rent Payment Dates or Optional Prepayment Dates, if applicable, and any Supplemental Rent which may be due, or (ii) Refunding Securities, together with cash, if required, in such amount as will, together with

interest to accrue thereon, be fully sufficient to pay such Basic Rent including the Principal Component, Interest Component and Prepayment Premium, if any, on their Basic Rent Payment Dates or Optional Prepayment Dates, if applicable, and any Supplemental Rent which may be due including any amounts owed and unpaid related to a municipal bond insurance policy issued by a Credit Enhancer or under the reimbursement agreement relating to a Credit Facility or the issuer of a Reserve Account Letter of Credit/Insurance Policy. Upon the Lessee meeting the requirement of this Section 4.06(c), the Corporation shall be entitled to payment of such Basic Rent Payments solely from such cash and/or Refunding Securities.

(d) In the event Refunding Certificates are issued which refund only a portion of an Outstanding Series of Certificates, the schedule of Basic Rent Payments for the corresponding Project and Group within such Project affected by such Refunding Certificates will remain the same but a credit will be given to the Lessee by the Trustee to take into account that payment of a portion of the Principal Component and the Interest Component which has been provided for by such refunding or defeasance of such portion of such Certificates from the issuance of said Refunding Certificates.

(e) In the event of a deposit with the Trustee of moneys and/or Refunding Securities for the purpose of paying or providing for payment of Certificates and other amounts due in accordance with Article XII of the Master Trust, all covenants, agreements and other obligations of the Lessee under this Master Lease, with respect to such Certificates shall be deemed performed except (i) those provisions hereof which by their express terms survive any such payment and defeasance and (ii) the obligation of the Lessee to make or cause to be made, Basic Rent Payments and Supplemental Rent payments on or for such Certificates from the moneys and/or Refunding Securities deposited pursuant to said Article XII of the Master Trust.

(f) In the event the Lessee prepays Basic Rent for a Group within a Project pursuant to Sections 4.06(a) or 4.06(c) hereof, such Prepayment shall be allocated, to the extent practicable, to maturities of Certificates relating to such Group.

**Section 4.07 TITLE.** Until the date on which payment, or provision for payment as provided in Section 4.06(c) hereof, of the Lease Payments relating to a Project or Group within a Project has been made, title to such Project or Group within a Project (including all substitutions thereto) upon acquisition, construction and installation thereof shall remain vested in the Property Corporation, subject to Permitted Encumbrances and subject to the terms of the Trust Agreement. At such time as payment, or provision for payment as provided in Section 4.06(c) hereof, of all Lease Payments relating to a Project or Group within a Project has been made in full, the Lessee shall be considered to have exercised an option to purchase such Project or Group within a Project, as the case may be, and title to such Project or Group within a Project free and clear of all encumbrances, except Permitted Encumbrances, including the University's interests in the Premises pursuant to the Ground Lease, shall vest automatically in the Lessee. Title to a portion of the Project which has been substituted for pursuant to Section 5.14 hereof and a portion of a Project disposed by the Lessee pursuant to Section 5.13 hereof shall vest automatically in the Lessee. The Property Corporation shall deliver any and all documents required to assure vesting of title. The Property Corporation hereby appoints the Lessee as

its agent to prepare and file or record in appropriate offices such documents as may be necessary to cause record title to such Project or Group within a Project to be in the Lessee.

**Section 5.03 QUIET ENJOYMENT.** The parties hereto mutually covenant that the Lessee, by keeping and performing the covenants and agreements herein contained, shall at all times during the term of this Lease Agreement peaceably and quietly have, hold and enjoy each Project without suit, trouble or hindrance from the Property Corporation and free from any claims against the Property Corporation and the Trustee and all persons claiming thereunder, by or through the Trustee or the Property Corporation.

**SECTION 5.08. RISK OF LOSS; STIPULATED LOSS VALUES; USE OF PROCEEDS.**

(a) As between the Property Corporation and the Lessee, the Lessee hereby assumes the entire risk of loss, from any and every cause whatsoever to the Projects..

(b) Except as provided in Section 5.08(c) hereof, the Lessee shall cause the Net Proceeds relating to a Project of any insurance or condemnation award or of any appropriation made in connection with a self insurance election received pursuant to Sections 5.05 and 5.07 hereof and of any title insurance award in excess of the Replacement Amount for such Project to be applied to the prompt repair, restoration or replacement of such destroyed, damaged, lost or condemned Project (which repair, restoration or replacement property shall become part of such Project). The title to all replacement portions to such Project shall be in the name of the Property Corporation. Except as otherwise provided herein, any such Net Proceeds shall be deposited with the Trustee in the subaccount of the Project Account from which the acquisition and construction of such Project was financed and shall be disbursed by the Trustee in accordance with the Trust Agreement; provided, however, that any amounts remaining after completion of such repair, restoration or replacement shall be applied as a credit to the payment of Basic Rent Payments. If such Net Proceeds are insufficient to pay for such repair, restoration or replacement, the Lessee shall (from the Lessee's Pledged Revenues) simultaneously deposit the amount of such deficiency with the Trustee, which deficiency shall constitute Supplemental Rent. Any Net Proceeds of insurance or condemnation award or of any appropriation made in connection with self-insurance election which is equal to or less than the Replacement Amount for such Project may, at the option of the Lessee, be deposited to the subaccount of the Interest Account relating to Certificates which financed or refinanced such Project.

(c) The Lessee may elect not to repair, restore or replace a Project which has been destroyed, damaged, lost or condemned, or any portion thereof, with the Net Proceeds of any insurance or condemnation award or of any appropriation made in connection with a self insurance election, by filing a certificate with the Trustee stating that (i) it has made such election, (ii) it is not in the best interests of the Lessee to repair, restore or replace such Project, or portion thereof, and (iii) the Lessee intends to abandon and cease to operate such Project, or portion thereof, damaged, destroyed, lost or condemned; provided, further, there shall be a Mandatory Prepayment in the amount of the Stipulated Loss Value (as hereinafter described) of the Project, or portion thereof, which is not repaired, restored or replaced, and if the Net

Proceeds are insufficient therefor, the deficiency shall constitute Supplemental Rent hereunder and shall be immediately due and payable from the Lessee's Pledged Revenues.

(d) The Stipulated Loss Value attributable to a loss of all of a Project shall be computed as the amount necessary to pay the Principal Component of and Interest Component on the Series of Certificates, the proceeds of which financed or refinanced the acquisition and construction of such Project, on the next succeeding Mandatory Prepayment Date. In the event that less than all of a Project then subject to this Lease Agreement suffers such a loss, damage or destruction, the Stipulated Loss Value shall be the product of (i) the result computed by the foregoing sentence multiplied by (ii) a fraction, the numerator of which is the original Cost of the portion of such Project suffering such loss, damage or destruction and the denominator of which is the aggregate Project Cost for the entire Project then subject to this Lease Agreement, including those items suffering such loss, damage or destruction. In each case, the Stipulated Loss Value shall also include any Supplemental Rent then due hereunder. Upon payment of such Stipulated Loss Value by Lessee, such Stipulated Loss Value shall be deposited to the credit of the account established in the Prepayment Fund for the sole benefit of the Owners of the Series of Certificates, the proceeds of which were used to finance or refinance the acquisition and construction of such Project. In the event of payment of the Stipulated Loss Value of a portion of the Project, the schedule of Basic Rent Payments in the Lease Schedule for such Project shall be adjusted downward by the Trustee to reflect the reduction in the Principal Component and Interest Component and the remaining Basic Rent resulting from such mandatory prepayment. Such adjustment shall be done in such manner as to match remaining aggregate payments of Basic Rent relating to the destroyed, damaged or condemned Project with principal of and interest coming due on the Series of Certificates which remain Outstanding, the proceeds of which were used to finance or refinance the acquisition and construction of such Project. **SECTION 5.12 OTHER LIENS.** The Lessee shall keep each Project and all parts thereof free from judgments and, except as to Permitted Encumbrances, free from all liens, claims, demands and encumbrances of whatsoever nature or character, to the end that each Project may at all times be maintained and preserved, and the Lessee shall keep each Project free from any claim or liability which might impair or impede the operation of such Project or the security granted in the Trust Estate to Certificate Owners by the Trust Agreement; provided, however, that the Lessee shall not be required to pay any such liens, claims or demand if the validity thereof shall concurrently be contested in good faith by appropriate proceedings, if interests of the Property Corporation and the Trustee shall not be in jeopardy and if the Lessee shall set aside or cause to be set aside reserves deemed by it to be adequate with respect thereto; and, provided, further, that the Lessee upon the commencement of any proceedings to foreclose the lien of any such charge or claim, will forthwith pay or cause to be paid any such charge or claim unless contested in good faith as aforesaid.

(b) The Lessee shall never, under any circumstances, have the power to subject the interest of the Property Corporation or its assignee in the Project to any mechanic's or materialman's lien or liens of any kind.

(c) The Lessee covenants and agrees with the Property Corporation that the Lessee will not permit or suffer to be filed or claimed against the interests of the Property Corporation and its assignee in the Project during the Lease Term any lien or claim of any kind and, if such lien be claimed or filed, it shall be the duty of the Lessee, within thirty (30) days after the Lessee shall have been given written notice of such claim being filed in the Public Records of the county where the Premises are located to cause the Project to be released from such claim, either by payment or by posting of a bond or by the payment into a court of competent jurisdiction the amount necessary to relieve and release the Project from such claim or in any other manner which, as a matter of law, will result within such period of thirty (30) days in releasing the Property Corporation and its assignee and Property Corporation's and its assignee's interest or interests from such claim.

### SECTION 5.13 ENCUMBRANCES OR SALES.

(a) Except as permitted in this Master Lease and except for Permitted Encumbrances, the Lessee will not create or suffer to be created any mortgage, pledge, lien, charge or encumbrance upon any Project or any portion thereof, or upon any real or personal property (which is not a portion of the Project) essential to the operation of such Project. The Lessee will not sell or otherwise dispose of any portion of a Project or any such property essential to the proper operation of a Project, except as provided below and in Section 5.14 hereof.

(b) In the manner and subject to the conditions for disposal of property of the Lessee by law, the Lessee may sell portions of a Project, other than Equipment, for fair market value upon the following conditions:

(i) The Lessee shall give written notice to the Trustee and the applicable Credit Enhancer, if any, of each such sale not less than thirty (30) days prior to such sale;

(ii) The Lessee determines pursuant to a certificate of an Authorized Officer that such portion of a Project is no longer needed for the purposes of such Project or such portion should be replaced with property having greater usefulness or value;

(iii) Such disposition shall not, in the opinion of Special Counsel, cause the Interest Component of the Basic Rent Payments received by the Owners of the Certificates (other than Taxable Certificates) to become includable in gross income of such Owners for purposes of federal income taxation; and

(iv) The Lessee shall use the proceeds of such sales either (A) to provide property (which shall become a part of the Project) of equal usefulness and value to the Lessee or (B) apply the Stipulated Loss Value (calculated in accordance with Section 5.08(d) hereof) thereof (but only if such value exceeds the corresponding Prepayment Amount) as a prepayment of Basic Rent.

The Corporation and the Trustee (subject to the provisions of the Master Trust) agree to take all action within their powers required to enable the Lessee to sell or otherwise dispose of any such property.

**Section 5.21 RESTRICTION AGAINST PLEDGE.** The Property Corporation shall not pledge Lease Payments or other amounts derived from the Projects or from rights of the Property Corporation under this Lease Agreement nor shall the Property Corporation encumber or place any lien upon the Projects, except as otherwise provided in this Lease Agreement, the Trust Agreement, the Assignment of Ground Lease and the Assignment Agreement.

**Section 5.22 ASSIGNMENT BY PROPERTY CORPORATION.** Except pursuant to the Assignment Agreement and except as set forth herein, the Property Corporation shall not assign this Lease Agreement, its rights to receive Lease Payments or its duties and obligations hereunder.

**Section 5.31 NON MERGER OF LEASEHOLD.** There shall be no merger of this Lease Agreement or of the leasehold estate hereby created with the fee estate in the Premises and the Project or any part thereof by reason of the fact that the same Person may acquire or hold, directly or indirectly, this Lease Agreement or leasehold estate hereby created or any interest in this Lease Agreement or in such leasehold estate and the fee estate in the Premises and the Project or any interest in such fee estate.

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