

**FLORIDA SOUTHWESTERN STATE COLLEGE DISTRICT BOARD OF TRUSTEES
Agenda Item Summary**

Meeting Date: 6/28/2016

1. **Action Requested/Purpose:** Approval of resolution authorizing a short term loan in an amount not to exceed \$5,000,000 for construction of the Suncoast Credit Union Arena and authorizing the Vice President, Administrative Services to negotiate and execute loan document.

2. **Fiscal Impact:** Yes No N/A

3. **Funding Source:** Donations/ Capital Impr Fees Amount: \$ Not to exceed \$5million

4. **Administration Recommendation:** Approval and adoption of the attached resolution.

5. **Agenda Item Type:**

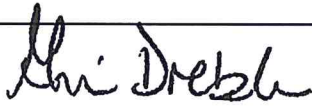
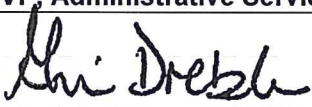
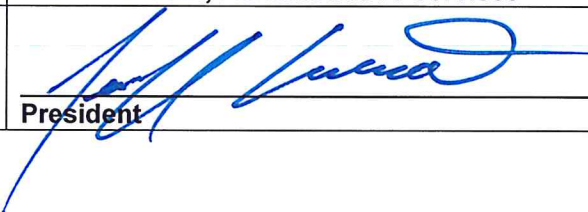
- Action Item
- Consent Agenda
- Information Only
- Board Requested Information/Report

8. **Requirement/Purpose (Include Citation)**

- Statute
- Administrative Code
- Other

§1001.64(38), Florida Statutes

9. Background Information: At the January 26, 2016, regular meeting of the Board of Trustees of Florida Southwestern State College, this Board approved an amended project budget of \$27,772,000 for the construction of the Suncoast Credit Union Arena at Florida SouthWestern State College. At that time there was recognition that the amended project would require future gifts and contributions as well as future Capital Improvement Fees in in the years 2017 and 2018. Therefore, in order to complete construction it is necessary that this Board arrange for a short term loan as authorized under section 1001.64(38), Florida Statutes. The Suncoast Credit Union has proposed a short term loan of up to \$5,000,000 over a maximum term of 5 years at a rate equal to prime less 0.25%. The attached resolution contains authorization for the administration to approve and execute all necessary loan documents to complete the proposed loan.

Requested By:	 <hr/> Gina Doeble, VP, Administrative Services
Funding Verified by:	 <hr/> Vice President, Administrative Services
Approved For Agenda by:	 <hr/> President

RESOLUTION

A RESOLUTION OF THE DISTRICT BOARD OF TRUSTEES OF FLORIDA SOUTHWESTERN STATE COLLEGE APPROVING OF THE TERMS OF A JUNE 7, 2016 COMMITMENT LETTER FOR A \$5,000,000 UNSECURED NON-REVOLVING LINE OF CREDIT/TERM LOAN; AUTHORIZING THE NEGOTIATION AND EXECUTION OF ALL LOAN DOCUMENTS; AUTHORIZING DRAWS AND DISBURSEMENTS FROM THE LINE OF CREDIT BY THE VICE PRESIDENT, ADMINISTRATIVE SERVICES; RATIFYING THE ACTIONS OF THE VICE PRESIDENT, ADMINISTRATIVE SERVICES AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on January 27, 2015, the Board of Trustees of Florida Southwestern State College approved a budget for the construction of the Suncoast Credit Union Arena at Florida SouthWestern State College;

WHEREAS, the College is now undertaking the construction of the Suncoast Credit Union Arena. The arena, when complete, will be approximately 75,000 square feet and will host the FSW Buccaneers' basketball and volleyball teams, intermural sports, and a student athletic center with an anticipated opening in December of 2016. The new arena will serve as the cornerstone of the campus and as a center for student activities; and,

WHEREAS, at the regular meeting of the Board of Trustees of Florida Southwestern State College on January 26, 2016, this Board approved an amended project budget of \$27,772,000; and,

WHEREAS, the amended project reflected that funding of budget would require future gifts and contributions as well as future Capital Improvement Fees in 2017 and 2018; and

WHEREAS, in order to complete construction it is necessary that this Board arrange for a short term loan as authorized under section 1001.64(38), Florida Statutes.

NOW, THEREFORE, BE IT RESOLVED BY THE DISTRICT BOARD OF TRUSTEES OF FLORIDA SOUTHWESTERN STATE COLLEGE AS FOLLOWS:

SECTION 1. APPROVAL OF TERMS OF LOAN. The District Board of Trustees of Florida SouthWestern State College hereby approves of the attached terms set forth in the attached June 7, 2016 commitment letter for a \$5,000,000 unsecured non-revolving line of credit/term loan terms between the District Board of Trustees of Florida SouthWestern State College, Florida and Suncoast Credit Union.

SECTION 2. AUTHORIZATION TO EXECUTE LOAN DOCUMENTS. The District Board of Trustees of Florida SouthWestern State College hereby authorizes and directs the Vice President, Administrative Services, Gina B. Doeble, EdD, CPA, to negotiate the terms of and execute, on behalf of the College, the Loan Documents, any amendments, supplements, modifications,

extensions and renewals to the Loan Documents and any and all other documents contemplated by the terms of the Loan Documents which the Suncoast Credit Union may request or require in connection with the consummation of the \$5,000,000 line of credit/loan as described in the commitment letter on behalf of the District Board of Trustees of Florida SouthWestern State College, Florida, including all loan documents necessary or appropriate to facilitate the completion of the loan with and Suncoast Credit Union and authorizes the Vice President, Administrative Services to draw from the loan proceeds as necessary in order to make the disbursements described in Section 3, below.

SECTION 3. DISBURSEMENT OF LOAN PROCEEDS. The District Board of Trustees of the Florida SouthWestern State College authorizes the Vice President, Administrative Services to periodically make draws upon the line of credit/loan over the 6 month draw period in such amounts and at such times as the Vice President, Administrative Services determines is reasonably necessary in order to fund the construction of the Suncoast Credit Union Arena at Florida SouthWestern State College or to reimburse the College for costs related thereto.

SECTION 4. FURTHER AUTHORITY GRANTED. The Vice President, Administrative Services is hereby authorized to take any and all other actions necessary to carry out and give effect to the transactions contemplated by or to be performed by the College under the Loan Documents. The Vice President, Administrative Services is authorized and directed to execute and deliver such other instruments and documents and take such other action as such the Authorized Officer may deem necessary or appropriate to effectuate the intent of the foregoing Resolutions and to consummate the transactions contemplated by the Loan Documents.

SECTION 5. ACTIONS RATIFIED. Any and all actions taken by the Vice President, Administrative Services in connection with the negotiation, preparation, and execution of the Loan Documents prior to the date hereof are hereby ratified, affirmed, and approved in all respects.

SECTION 6. SEVERABILITY AND INVALID PROVISIONS. If any one or more of the provisions herein contained shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements, or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements, or provisions and shall in no way affect the validity of any of the other provisions hereof.

SECTION 7. EFFECTIVE DATE. This Resolution shall become effective immediately upon its adoption.

ADOPTED this 28th day of June, 2016.

**DISTRICT BOARD OF TRUSTEES
FLORIDA SOUTHWESTERN STATE**

By: _____
Chair

ATTEST:

Dr. Jeffery S. Allbritten, Secretary



The District Board of Trustees of
Florida Southwestern State College, Florida
8099 College Parkway
Ft. Myers, Florida 33919

Attention: Mark Lupe, General Counsel

Re: Commitment for \$5,000,000.00 Unsecured Non-Revolving Line of Credit/Term Loan (the "Loan")

Dear Mr. Lupe:

We are pleased to inform you that Suncoast Credit Union (the "Lender") has approved your loan request. This letter constitutes Lender's commitment (the "Commitment") for the loan (the "Loan"), subject to and upon the following terms and conditions:

1. **Borrower:** The District Board of Trustees of Florida Southwestern State College, Florida.
2. **Loan Amount:** Up to \$5,000,000.00.
3. **Purpose:** The Loan is for the purpose of providing a non-revolving line of credit of up to \$5,000,000.00, available for a period of nine (9) months (the "Draw Period") in order to provide additional funds as necessary for the construction and completion of a new on-campus 75,000 square foot, 3,300 seat sports arena and convocation facility to be known as the "Suncoast Arena", which is currently under construction on the campus of Florida SouthWestern State College (the "Project") and to pay closing costs; with the outstanding principal balance of the Loan to be converted to a term loan upon the expiration of the Draw Period. Amounts not drawn during the Draw Period will not be available for borrowing thereafter.
4. **Interest Rate:** The rate of interest shall be equal to the Wall Street Journal Prime Rate (as of the first business day preceding the Closing, as defined below) minus 0.25%, to be adjusted on the 15th day of each quarter; provided, however, that the interest rate shall never be less than the initial interest rate as of Closing. All interest charged on the Loan shall be based on a 365 or 366, as applicable, day year for the actual number of days elapsed.
5. **Term:** *Draw Period:* Nine (9) Months. *Permanent Period:* Fifty-one (51) Months, provided that no Default or Default Condition (as defined in the Loan Agreement) then exists.
6. **Repayment:** During the Draw Period, interest only quarterly, on the 15th day of each quarter. During the Permanent Period, equal quarterly payments on the 15th day of each quarter of principal and interest based on the outstanding principal balance of the Loan as of the end of the Draw Period, bearing interest at the Interest Rate, with the payment calculated on a quarterly amortization schedule over fifty-one (51) months; *provided, however*, that upon any adjustment in the Interest Rate as the result of any quarterly change in the Wall Street Journal Prime Rate, the quarterly payment may be adjusted by Lender to reflect the new Interest Rate and the remaining term of the original amortization schedule. The entire outstanding principal balance and all accrued interest shall be due in full at the end of the Permanent Period.
7. **Prepayment:** The Loan may be prepaid in whole or in part at any time without penalty or premium.

8. **Commitment Fee:** One-half of one percent (0.50%) of the Loan Amount or (\$25,000.00), which shall be paid at the time of closing of the Loan (the "Closing"). In the event the Loan does not close no fee shall be due.
9. **Security:** The Loan shall be unsecured.
10. **Interest During Draw Period:** Borrower shall pay from its own resources interest on the Loan as it shall become due and there shall be no interest reserve component of the Loan.
11. **Secondary Financing Prohibited:** There shall be no secondary financing with respect to the Property or the Project.
12. **Financial Reporting:** Borrower shall be required to provide to Lender complete copies of its unaudited financial statements within 120 days of the end of each of Borrower's fiscal years, which fiscal years end as of June 30th of each year and its certified public accountant audited financial statements on or before March 31st of the following year.
13. **Special Conditions:** In addition to the foregoing, the following special conditions shall apply to and be requirements of the Loan:
 - a. **Auto-Debit.** As a condition of the Loan, Borrower shall be required to authorize Lender to automatically debit a deposit account maintained with Lender or a federally insured financial institution with a capitalization acceptable to Lender for any payments of principal and/or interest due under the Loan.
14. **Lender's Counsel:** Lender's counsel for this transaction shall be Shumaker, Loop & Kendrick, LLP. The cost of Lender's counsel shall be charged to, and be paid by, Borrower. **LENDER'S COUNSEL REPRESENTS ONLY THE LENDER AND NOT THE BORROWER. BORROWER IS ADVISED TO EMPLOY ITS OWN COUNSEL TO REPRESENT BORROWER'S INTERESTS.**
15. **Loan Documents:** The loan documents ("Loan Documents") utilized for this Loan shall be prepared by Lender's Legal Counsel (defined above) and shall be in all respects acceptable to Lender. To the extent the Loan Documents do not include any provisions or covenants for the satisfaction of all unsatisfied terms and conditions of this Commitment or do not include provisions or covenants for the continuing satisfaction of all satisfied terms and conditions of this Commitment, this Commitment shall survive Closing as to those terms and conditions. The Loan Documents shall contain representations and warranties, as well as covenants, typical for transactions of this type and consistent with Lender's requirements.
16. **Quality of Documents and Items:** Each document and item required to be submitted to Lender shall be satisfactory in form and substance to Lender and Lender's Counsel.
17. **Organizational Documents:** Lender must receive and approve prior to Closing all organizational documents relative to Borrower, as well as evidence of good standing or qualification to do business, appropriate borrowing resolutions and incumbency certificates of Borrower and the governing body of Borrower, all of which must be in all respects acceptable to Lender and Lender's counsel.
18. **Information Provided:** All information provided by or on behalf of Borrower with respect to the application for the Loan or in connection with this Commitment is true and correct in all material respects and does not contain any untrue statement of material fact or omit to state any material

fact necessary to make the statements herein or therein not misleading in light of the circumstances under which they were made. Borrower has provided Lender with all relevant information relative to the Project and its own financial and business condition and will advise Lender in writing of any material change to any of same.

19. **Publicity:** Lender may advertise its role as lender by any means that it deems appropriate and shall be entitled to erect and maintain during construction of the Project (a) lawful sign(s) advertising Lender's provision of financing with respect to the Project.
20. **Lender Regulatory Requirements:** This Commitment is subject to all regulatory requirements applicable to Lender. Lender shall never be under any obligation to advance funds in excess of its legal lending limit or which advance would result in a violation of law or regulation as it relates to Lender.
21. **Brokers:** Borrower warrants that it has not engaged or dealt with any broker or other intermediary to arrange the Loan. Borrower shall indemnify, defend and hold Lender harmless from any loss, cost (including attorneys' fees), damage, claim, demand, judgment, liability or expense, or amounts paid in settlement or compromise thereof, suffered or incurred by Lender from claims by any alleged broker for a commission or other compensation relating to the Loan.
22. **Time of Essence:** With respect to the performance of all obligations of the Borrower under this Commitment, time is agreed to be of the essence.
23. **No Partnership:** Nothing herein contained shall constitute a partnership or joint venture by or between Lender and Borrower.
24. **Expenses:** Borrower shall be responsible and liable for, and shall hold Lender harmless from, and shall pay, all costs and expenses incurred in connection with the Loan, including, but not limited to: Loan fees; brokerage commissions and claims of brokerage fees; documentary stamp taxes; and attorneys' fees and costs. It is anticipated that legal fees for this transaction will not exceed the sum of \$5,500.00. Borrower shall reimburse Lender for all such costs and expenses paid by Lender, if the Loan closes.
25. **Submissions:** Each item required to be submitted to Lender as a condition of Closing must be submitted to Lender not less than 10 days prior to the Closing of the Loan.
26. **Assignability:** This Commitment and Borrower's rights hereunder may not be assigned without Lender's prior written approval, which may be withheld in Lender's sole and absolute discretion.
27. **No Third Party Beneficiary:** This Commitment is for the benefit only of the parties hereto. No third party shall have any interest in this Commitment or in the proceeds of the Loan.
28. **Entire Agreement:** This Commitment, when accepted, shall constitute the entire agreement between Borrower and Lender, and may not be altered or amended unless in a writing signed by Lender and Borrower.
29. **Terms:** This Commitment does not set forth all the terms and conditions or requirements of the Loan, which shall be more fully set forth in the definitive Loan Documents.

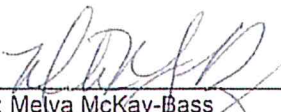
30. **Waiver:** No waiver of any term, covenant or provision of this Commitment shall be effective unless given, for value, in writing by Lender and if so given by Lender shall only be effective in the specific instance given.
31. **Governing Law:** This Commitment shall be governed, interpreted and construed by, through and under the laws of the State of Florida, *excepting, however*, its laws or principles regarding conflicts or choice of laws.
32. **Waiver of Jury Trial:** THE PARTIES EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE, FOR THEMSELVES AND THEIR RESPECTIVE HEIRS, SUCCESSORS AND ASSIGNS, ANY RIGHT WHICH ANY ONE OF THEM MAY HAVE TO A JURY TRIAL IN ANY SUIT BASED ON THIS COMMITMENT OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS COMMITMENT OR IN CONNECTION WITH THE FINANCING CONTEMPLATED HEREIN. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO ISSUE THIS COMMITMENT. THE LOAN DOCUMENTS WILL CONTAIN A SIMILAR WAIVER OF JURY TRIAL PROVISION.
33. **Customer Identification Program:** TO HELP THE GOVERNMENT FIGHT THE FUNDING OF TERRORISM AND MONEY LAUNDERING ACTIVITIES, FEDERAL LAW REQUIRES ALL FINANCIAL INSTITUTIONS TO OBTAIN, VERIFY, AND RECORD INFORMATION THAT IDENTIFIES EACH PERSON WHO OPENS AN ACCOUNT.
- WHAT THIS MEANS FOR YOU: WHEN YOU OPEN AN ACCOUNT, WE WILL ASK FOR YOUR NAME, ADDRESS, DATE OF BIRTH, AND OTHER INFORMATION THAT WILL ALLOW US TO IDENTIFY YOU. WE MAY ALSO ASK TO SEE YOUR DRIVER'S LICENSE OR OTHER IDENTIFYING DOCUMENTS.
34. **Patriot Act Compliance:** At all times Borrower or any principal or officer of Borrower: (a) shall not be listed in (i) the Annex to Executive Order 13224, 66 Fed. Reg. 59079 (September 25, 2001) (the "Executive Order") or (ii) the list of Specially Designated Nationals and Block Persons maintained and generated by the Office of Foreign Assets Control of the U.S. Treasury Department (the "Blocked Persons List"); (b) shall not be an affiliate of, or controlled by, any person listed in the Annex to the Executive Order of the Blocked Persons List; (c) shall not be a person with whom Lender is prohibited from doing business, dealing or entering into any transaction with pursuant to any law, regulation or order relating to terrorism or money laundering, including without limitation the Executive Order; and (d) shall be in full compliance with all applicable orders, rules, or regulations promulgated under or in connection with the Executive Order and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "Patriot Act").
35. **Commitment Expiration:** This Commitment expires, at Lender's option, on the earliest of the following dates (the "Commitment Expiration Date"): (a) September 9, 2016; (b) the Acceptance Date (as defined below), unless requirements for acceptance are timely satisfied as set forth below; or (c) the actual date of closing of the Loan.
36. **Automatic Termination of Commitment:** Lender's obligations hereunder shall terminate without notice upon the occurrence of any of the following: (a) the filing by or against Borrower of a petition in bankruptcy or insolvency or for reorganization under the Federal Bankruptcy Code; (b) the appointment of a receiver or trustee, or the making by such party of any assignment for the benefit of creditors; (c) commencement under any other law, state or federal, bankruptcy or insolvency proceedings for relief from, or the composition, extension, arrangement or adjustment

of, Borrower's obligations, prior to the closing of the Loan; (d) the discontinuance of Borrower's business as a going concern; (e) the death of Borrower (if a natural person); (f) a default by Borrower under any other obligation to Lender; (g) the issuance of a writ of attachment against any property of Borrower; (h) a material adverse change of the business or financial condition of Borrower; or (i) Lender determines that Borrower, is a person listed at any time in the list of Specially Designated Nationals and Blocked Persons maintained and generated by the Office of Foreign Assets Control of the U.S. Treasury Department.

Unless an acceptance is received on or before July 15, 2016 ("Acceptance Date"), this Commitment shall be, at Lender's option, null and void.

Very truly yours,

Suncoast Credit Union

By: 
Name: Melva McKay-Bass
Title: Senior Vice President of Business
Development

Accepted and agreed to:

Borrower:

THE DISTRICT BOARD OF TRUSTEES OF
FLORIDA SOUTHWESTERN STATE
COLLEGE, FLORIDA

By: _____

Name: _____

Title: _____

Dated: _____