



Item: SP: A-1

STRATEGIC PLANNING COMMITTEE
Wednesday, December 12, 2007

SUBJECT: Harbor Branch Memorandum of Understanding

PROPOSED COMMITTEE ACTION

Recommend adoption of a Board of Trustees resolution approving the final Memorandum of Understanding ("MOU") with Harbor Branch Oceanographic Institution, Inc. ("HBOI") and authorizing the President to take such further actions and to execute such documents as are necessary and appropriate to achieve the purposes of the MOU.

BACKGROUND INFORMATION

The final MOU with HBOI outlines the framework for transferring certain HBOI assets, including approximately 138 acres of real property, HBOI personal property, HBOI operational/research contracts, and intellectual property associated with current HBOI operations. The transferred assets will become a part of FAU and remain intact as an FAU research institute, reporting primarily to the Provost's office and other organizational divisions throughout FAU. The MOU also covers the transition of the HBOI employees to FAU, the restructuring of HBOI into an FAU direct-support organization, and those assets and liabilities retained by HBOI.

Approximately 138 acres are transferring to FAU. The property transferring to FAU will be restricted to educational and research use and HBOI shall have the right to approve any further transfers by FAU for six years after the closing. The adjacent real property retained by HBOI is subject to similar use restrictions and FAU shall have perpetual approval rights over any future transfers by HBOI (other than to the state or county for conservation, passive or recreational use). We understand that 123 acres of the remaining property are scheduled to be acquired by St. Lucie County for a county park/preserve and that funding for such an acquisition has now been approved by the State. Appropriate easement agreements for access and utilities will be mutually provided.

The Harbor Branch employees shall be offered employment with FAU at their current salary. Those employees fully funded with state dollars in FAU's current operating budget may not be terminated by FAU without cause earlier than June 30, 2008. Harbor Branch shall retain all employee liabilities prior to the closing date and shall compensate the Harbor Branch

employees for all vested paid time off. With limited exceptions, the Harbor Branch employees will come into FAU as new FAU employees.

In conjunction with the closing, the HBOI Board is reorganizing itself to become a direct-support organization of FAU—to operate exclusively to receive, hold, invest and administer property to and for the benefit of FAU and the FAUHBOI Institute. The HBOI Foundation will have two appointees from FAU. The current HBOI endowment and debt liabilities will remain with the reorganized HBOI Foundation.

IMPLEMENTATION PLAN/DATE

The final closing date for the transaction is scheduled for December 31, 2007. Preparations for the transition have been ongoing.

FISCAL IMPLICATIONS

Governor Crist has previously approved the appropriation to FAU of \$8.16 million in recurring funding for the operation of Harbor Branch by FAU and a one-time appropriation to FAU of \$44.6 million in funds for site work, renovations, environmental, health and safety, IRM, and new construction expendable as of July 1, 2007. The Personnel Services Agreement previously approved by this Board—under which FAU retained the services of HBOI with the appropriated funds to preserve, maintain and enhance the value of the Harbor Branch assets during the interim period—will terminate on the December 31, 2007 closing date. HBOI and FAU shall work cooperatively to secure additional appropriated funds in future years to accomplish recurring funding of at least \$13.750 million as originally contemplated in the original Letter of Intent dated April 25, 2007

Supporting Documentation: Memorandum of Understanding
Proposed Resolution

Presented by: David L. Kian

Phone: 561-297-3007

12-05-07

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is made and entered into as of this ____ day of _____, 2007 ("Effective Date"), by and between **Harbor Branch Oceanographic Institution, Inc.**, a non-profit corporation organized and existing under the laws of the State of Florida, with a principal places of business at 5600 U.S. 1 North, Ft. Pierce, FL 34946 ("Harbor Branch" or "HBOI"), and the **Florida Atlantic University Board of Trustees**, a public body corporate of the State of Florida, with a principal place of business at 777 Glades Road, Boca Raton, Florida 33431 ("FAU" or "University").

WHEREAS, Harbor Branch is a non-profit oceanographic institution dedicated to understanding and conserving the world's oceans through exploration, research and education for the benefit of mankind; and

WHEREAS, FAU is a public university committed to providing access to challenging opportunities in higher education for students in Southeast Florida and beyond and supporting research and service that enhances economic, human, and cultural development; and

WHEREAS, FAU and the State of Florida have determined that Harbor Branch would make a valuable addition to FAU's research and educational endeavors; and

WHEREAS, Harbor Branch desires to transfer to FAU and FAU desires to accept from Harbor Branch certain Harbor Branch assets and operations located at 5600 U.S. 1 North, Ft. Pierce, Florida (the "Harbor Branch Facility"), pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Assets Transferred. On or before December 31, 2007 (the "Closing Date"), Harbor Branch agrees to transfer, assign, convey and deliver to FAU and FAU agrees to accept and assume all of HBOI's right, title and interest in the following Harbor Branch assets (collectively the "Harbor Branch Assets"):

A. Real Property: By Special Warranty Deed, approximately 138 acres of real property located at 5600 U.S. 1 North, Ft. Pierce, Florida, as more particularly described on Exhibit 1A1 (the "Real Property"), and all buildings, appurtenances or fixtures located on the Real Property on the Effective Date, subject to the restrictive covenants in substantially the form set forth on Exhibit 1A2. In addition to the restrictive covenants set forth on Exhibit 1A2, and for a period of six (6) years after the Closing Date, any transfer of ownership by FAU of any of the Real Property shall be subject to the consent and approval of the HBOI Foundation (as described in paragraph 4 below), which consent and approval shall not be unreasonably withheld, conditioned or delayed.

B. Personal Property: By Bill of Sale, all equipment, machines, appliances, furniture, artwork, computers, supplies, storage tanks and all other personal property belonging to Harbor Branch and located on or at the Real Property on the Effective Date, including without limitation all Harbor Branch vehicles, ships and submersibles.

C. Contracts:

(i) Operations: By assignment, the contracts, permits, licenses, leases and other operating or cooperative agreements associated with FAU's operations of the Harbor Branch Assets and assignable to FAU.

(ii) Research: By assignment, the research and research-related contracts associated with FAU's operations of the Harbor Branch Assets and assignable to FAU.

(iii) Limitations: The assignment of the contracts set forth in subsections (i) and (ii) above to FAU, as a public body corporate of the State of Florida, shall be governed by the laws of the State of Florida, specifically including without limitation Chapter 119 (public records), Section 768.28 (limited waiver of sovereign immunity), and the jurisdiction of the courts of the State of Florida.

D. Intellectual Property: By assignment, all Harbor Branch trademarks, patents, copyrights and other intellectual property rights associated with the Harbor Branch assets listed above. Harbor Branch reserves the right to use the name "Harbor Branch" and any other logos, tradenames or trademarks currently owned by Harbor Branch in connection with its continuing operation as a direct support organization of FAU and as a publicly supported charity.

2. Restructured Organization. Except to the extent permitted by the provisions set forth in Exhibit 1A2, on the Closing Date, the Harbor Branch Assets will become a part of FAU and thereafter remain intact as an FAU research institute, reporting to the University Provost's Office and other organizational offices throughout FAU. FAU's operations of the research institute shall be referred to as the Harbor Branch Oceanographic Institute at FAU ("FAUHBOI"). After the Closing Date, and subject to the provisions of Section 3A below, the reporting and operational structure of FAUHBOI may be reorganized and restructured at the discretion of FAU. Notwithstanding the foregoing, FAU retains the right to use the Harbor Branch Assets for any purpose consistent with the provisions set forth in Exhibit 1A2.

3. Employees.

A. Offers of Employment. Commencing as of the Closing Date, FAU agrees to make offers of employment to all Harbor Branch employees employed by Harbor Branch on the Closing Date (the "Harbor Branch Employees"), at the same salary they are earning as of the Effective Date. All offers, conditions and benefits of employment at FAU shall be subject to FAU's standard employment terms and conditions. Notwithstanding the foregoing, FAU agrees that: (i) the term of employment for any Harbor Branch Employees accepting an employment offer with FAU and fully funded with state dollars may not be terminated by FAU without cause earlier than June 30, 2008, (ii) FAU's standard six-month probationary period will be waived for the incoming Harbor Branch Employees, and (iii) unless otherwise agreed upon, the job-site for all Harbor Branch Employees shall be located at the Harbor Branch Facility until June 30, 2008. The term of employment for any Harbor Branch employees funded, in whole or in part, with grant dollars may be terminated by FAU at any time pursuant to FAU's standard employment terms and conditions.

B. Employee Liabilities. Harbor Branch shall retain all obligations and liabilities associated with the employment of the Harbor Branch employees prior to the Closing Date and associated with any termination of such employees from Harbor Branch, including

without limitation all workers' compensation and unemployment compensation matters arising before the Closing Date. Harbor Branch shall in all cases compensate those Harbor Branch employees accepting offers of employment with FAU for earned but unused vacation and sick leave time in accordance with Harbor Branch policies. FAU shall not be considered a successor employer to Harbor Branch and Harbor Branch shall provide written notice of such to all Harbor Branch employees prior to the Closing Date.

C. Tenure Considerations. The Harbor Branch Employees accepting employment at FAU shall not be eligible for tenure at FAU unless they apply for and are transferred into an established FAU tenure-eligible position, pursuant to FAU's standard terms and conditions.

D. Bargaining Unit Considerations. Harbor Branch represents that there are no collective bargaining agreements applicable to the Harbor Branch employees. The Harbor Branch employees accepting offers of employment with FAU will form a new class of FAU employees and will be designated appropriately by FAU.

4. HBOI Foundation. On or before the Closing Date, HBOI will amend its Articles of Incorporations and By-Laws to change its name to Harbor Branch Oceanographic Institution Foundation, Inc., and as necessary to remain a publicly supported charity and to become a separate, stand-alone direct-support organization of FAU, certified by FAU as organized and operating exclusively to receive, hold, invest and administer property and to make expenditures to or for the benefit of FAU or FAUHBOI (the "HBOI Foundation"). The articles and by-laws of the HBOI Foundation shall be subject to the reasonable approval of FAU. The HBOI Foundation will not become a subsidiary of Florida Atlantic University Foundation, Inc. and shall continue to support FAU or FAUHBOI as long as FAUHBOI continues as a part of FAU. The HBOI Foundation's board of directors will have two (2) appointees from FAU. The current Harbor Branch endowment will remain with the HBOI Foundation. The HBOI Foundation shall retain liabilities or obligations of Harbor Branch pursuant to this MOU, specifically including without limitation the indemnification obligations of Harbor Branch set forth in Section 7 below. HBOI Foundation distributions shall be made in the sole discretion of the HBOI Foundation Board of Directors to defray the expenses of its operations, to restore restricted corpus and retire debt, and to or for the benefit of FAUHBOI or FAU. Distributions made to or for the benefit of FAUHBOI or FAU may include, without limitation: (i) providing funds for research activities conducted by the faculty and staff of FAUHBOI or FAU; (ii) providing, maintaining and improving the libraries, programs and activities of FAUHBOI or FAU; (iii) providing funds to acquire or purchase real or personal property or services and construction for the benefit of FAUHBOI or FAU; (iv) providing students of FAUHBOI or FAU with funds to pursue their education; and (v) providing funds and resources to carry on any proper activities of FAUHBOI or FAU in furtherance of its mission and purposes. FAU agrees to provide the HBOI Foundation with mutually agreeable temporary space in the real property facilities until such time as the HBOI Foundation obtains a permanent home.

5. Retained Assets and Liabilities. The Harbor Branch Assets transferred to FAU shall not include the following Harbor Branch retained assets and liabilities (collectively the "Harbor Branch Retained Assets"):

A. Harbor Branch Loans and Debt: FAU shall not assume any loans, debts or other financial obligations of Harbor Branch. Any obligations with respect thereto shall be retained by the HBOI Foundation.

B. Real Property: Any real property owned by Harbor Branch and not conveyed to FAU as set forth on Exhibit 1A1 shall be retained and owned by HBOI Foundation (the "Harbor Branch Retained Real Property"). The title documents of the Harbor Branch Retained Real

Property shall be subject to restrictive covenants in substantially the form set forth on Exhibit 5B. HBOI Foundation shall retain the proceeds of any approved future sales or leases of the Harbor Branch Retained Real Property to use as described in paragraph 4 above.

C. Other Contractual Obligations. Any contractual obligations of Harbor Branch associated with the HBOI Foundation, the Harbor Branch Retained Assets or not specifically assigned to and assumed by FAU as set forth in paragraph 1C above.

D. Transfer Development Rights. In the event that the proposed Amendment to the Comprehensive Land Use Plan of St. Lucie County, Florida, establishing a Towns, Villages, and Countryside Element, is approved and adopted substantially in its currently proposed form, and then implemented by ordinances substantially in their currently proposed form, Harbor Branch shall have and retain the right to transfer development rights on the Real Property pursuant to the Transfer of Development Rights Program established in the ordinances and receive payment therefore, on the condition that the Residual Uses, as defined in the Ordinance and permitted on the Real Property being conveyed to FAU, include those Residual Uses currently set forth in the definition of the term Higher Education, Agricultural Research and Education facilities, as contained in the Ordinance. FAU shall cooperate with Harbor Branch in granting conservation easements or deed restrictions, as required by the Ordinance, to accomplish the foregoing.

6. Access, Easements and Riparian Rights. On the Closing Date and as reasonably necessary thereafter, FAU and Harbor Branch shall grant mutually agreeable access, easement and riparian rights over, on or under the Real Property and the Harbor Branch Retained Real Property to provide for reasonable ingress and egress to and from their respective properties as well as reasonable harbor and utility access and use rights.

7. Indemnification. Harbor Branch agrees to defend, indemnify and hold free and harmless, FAU, the Florida Board of Governors, the State of Florida, and their respective trustees, officers, employees and agents, from and against any and all actions, claims, liabilities, assertions of liability, losses, costs, and expenses, including attorneys fees, which in any manner directly or indirectly may arise or be alleged to have arisen, or result or be alleged to have resulted, from the operations or activities of every kind and nature of Harbor Branch or its officers, employees, agents or contractors, or pertain or be alleged to pertain in any manner to the Harbor Branch Assets or the Harbor Branch Employees at any time prior to the Closing Date, whether known or unknown, including without limitation (i) any hazardous substances or environmental conditions existing on, at, under, or within the Harbor Branch Assets, or any portion thereof, at any time prior to the Closing Date, whether known or unknown; (ii) any releases or discharges of hazardous substances on, at, under, within, or from the Harbor Branch Assets, or any portion thereof, at any time prior to the Closing Date, whether known or unknown; (iii) any activity in connection with the handling, treatment, removal, storage, decontamination, cleanup or disposal of hazardous substances on, at, under, within, or from the Harbor Branch Assets, or any portion thereof, at any time prior to the Closing Date, whether known or unknown; and (iv) the lack of compliance with or violation of any environmental laws at any time prior to the Closing Date, whether known or unknown. Harbor Branch's indemnification obligations set forth herein shall include, without limitation, any cleanup, remediation or restoration required in connection with any of the conditions set forth in clauses (i), (ii), (iii), and (iv) of the preceding sentence. Harbor Branch's indemnification obligations set forth herein shall apply with equal force and effect to the Harbor Branch Retained Assets with respect to claims arising or alleged to have arisen prior to, on or after the Closing Date. Notwithstanding the foregoing, the indemnification obligations of Harbor Branch set forth herein shall have no further force or effect for any pre-existing environmental conditions or liabilities first discovered or revealed

more than six (6) years after the Closing Date.

8. Pre-Closing Covenants and Obligations.

A. Harbor Branch Operations. Prior to the Closing Date, except to the extent that FAU shall have given Harbor Branch consent for them to do otherwise, Harbor Branch shall:

(i) continue to operate Harbor Branch in substantially the same manner in which it is being conducted on the Effective Date and in conformity with the parties' Personnel Services Agreement dated June 29, 2007;

(ii) not sell, lease, pledge or otherwise transfer, contract or encumber any right, title or interest in the Harbor Branch Assets;

(iii) take all actions reasonably necessary in the ordinary course of business to maintain any currently existing licenses or permits; and

(iv) obtain any and all required consents for the transfer and/or assignment of the Harbor Branch Assets to FAU.

B. Disclosure of Information. Within ten (10) days of the Effective Date, or, if such information is not then available, as soon as reasonably practical, Harbor Branch shall make available for FAU review:

(i) all Harbor Branch financial and operating information pertaining to the Harbor Branch Assets for the twelve (12) months immediately preceding the Effective Date;

(ii) all documentation in the possession of Harbor Branch pertaining to the Real Property, specifically including without limitation, all surveys, environmental reports, deeds, leases, title insurance policies, zoning restrictions, leases, easements and other encumbrances; and

(iii) any other documentation in the possession of Harbor Branch and reasonably related to the Harbor Branch Assets.

C. Access, Inspections, Surveys & Title Work. Prior to the Closing Date, Harbor Branch shall allow FAU reasonable access to the Harbor Branch Assets to facilitate FAU inspection of the Harbor Branch Assets, including without limitation Phase I and Phase II environmental site investigations. Harbor Branch agrees to retain responsibility and any costs associated therewith with respect to the completion of the final real property survey, which survey shall reflect (i) the legal descriptions and boundaries of the Real Property and the Harbor Branch Retained Real Property; (ii) all current easements and other title exceptions affecting the Real Property; and (iii) all new easements between the parties affecting the Real Property and the Harbor Branch Retained Property, as more specifically set forth on Exhibit 6. Harbor Branch shall conduct a title search and obtain a final title policy on the Real Property for the benefit of FAU, the cost of which shall be shared equally between Harbor Branch and FAU.

9. Representations and Warranties.

A. Title: Except as specifically disclosed on Exhibit 9, Harbor Branch represents and warrants that the Harbor Branch Assets will be owned by Harbor Branch on the Closing

Date and transferred to FAU free and clear of all encumbrances, tenants, liens (including tax liens) and security interests. Harbor Branch further represents and warrants that it is the fee simple owner of the Real Property and agrees to convey good, marketable and insurance title to FAU by special warranty deed. The Real Property shall be conveyed by Special Warranty Deed and the personal property shall be conveyed by Bill of Sale.

B. Obligations: Except as specifically disclosed on Exhibit 9, Harbor Branch represents and warrants that there are no unresolved defaults, breaches, claims, notices of violations, proceedings, litigation or other adverse claims or interests concerning the Harbor Branch Assets.

C. Compliance with Law: Except as specifically disclosed on Exhibit 9, Harbor Branch represents and warrants that, to the best of its knowledge and belief after reasonable investigation, the Harbor Branch Assets and the operations associated therewith are in compliance with all applicable federal, state and local laws, statutes, ordinances, orders, rules and regulations, specifically including without limitation those concerning environmental, health and safety and the handling, management, storage or disposal of hazardous materials, petroleum products or aboveground and underground storage tanks.

D. Hazardous Materials: Except as specifically disclosed on Exhibit 9, Harbor Branch represents and warrants that, to the best of its knowledge and belief after reasonable investigation, there are no hazardous materials or petroleum products present in, on or under the Real Property and there have been no releases or environmental incidents on the Real Property in reportable quantities.

E. Corporate Status and Authority: HBOI is a corporation in good standing under the laws of the State of Florida and the execution, delivery and performance of this Agreement and the transactions contemplated herein have been duly authorized by all necessary action on the part of HBOI.

10. Closing: On or before the Closing Date, Harbor Branch shall:

A. deliver to FAU all documents reasonably necessary to transfer the Harbor Branch Assets to FAU subject to the terms set forth in this MOU, specifically including without limitation a special warranty deed for the Real Property, a bill of sale or other transferring document for the personal property and intellectual property, an assignment agreement for the contracts referenced in paragraphs 1C(i) and 1C(ii), the restrictive covenants set forth in Exhibits 1A2 and 5B, the access, easements and riparian rights agreements referenced in paragraph 6, termination agreements for the Land Lease and Joint Facility Use Agreement (both effective September 9, 2005) between FAU and HBOI, and any other documents as the title company or FAU shall reasonably require;

B. deliver to FAU possession and control of the Harbor Branch Assets; and

C. accomplish all of the pre-closing requirements set forth in this MOU, including without limitation the restructuring of HBOI as more specifically set forth in Section 4 above.

11. General Conditions:

A. FAU and Harbor Branch shall cooperate and use commercially reasonable efforts to effectuate the transactions contemplated by this MOU.

B. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this MOU. None of the parties intend to directly or substantially benefit a third party by this MOU. The parties agree that there are no third party beneficiaries to this MOU and that no third party shall be entitled to assert a claim against any of the parties based upon this MOU.

C. The performance of the University of any of its obligations under this MOU shall be subject to and contingent upon the availability of funds appropriated by the state legislature or the prime funding agency, or otherwise lawfully expendable for the purpose of this MOU for the current and future periods. The University shall give notice to Harbor Branch of the non-availability of such funds when University has knowledge. Notwithstanding the foregoing, the parties acknowledge that: (i) as of the Effective Date, Governor Crist has previously approved a legislative appropriation to FAU of \$8.16 million in recurring funding for the operation of the Harbor Branch Assets by FAU and a one-time appropriation to FAU of \$44.6 million in funds for site work, renovations, environmental, health and safety, information technology and new construction for the Harbor Branch Assets, expendable as of July 1, 2007; (ii) both parties acknowledge that they would not have executed this Memorandum of Understanding were it not for the appropriation of these funds and their anticipated expenditure for the purposes for which they were appropriated; and (iii) both parties shall use reasonable efforts to work cooperatively to secure additional appropriated funds in the future years to accomplish recurring funding of at least \$13.750 million as originally contemplated in the Letter of Intent between the parties dated April 25, 2007.

D. The validity, construction and effect of this MOU shall be governed by the laws of the State of Florida, without respect to choice of law principles. The University, as an agency of the State of Florida, is entitled to the benefits of sovereign immunity coextensive therewith, including immunities from taxation, and nothing herein shall constitute of waiver of such sovereign immunity.

E. Harbor Branch shall allow public access to all documents, papers, letters or other material, made and received by Harbor Branch in conjunction with this MOU, if and to the extent required by the provisions of Chapter 119, Florida Statutes. Refusal by Harbor Branch to allow such public access shall be grounds for cancellation of this MOU by the University.

F. This Agreement shall be subject to cancellation by either party upon 20 calendar days written notice to the other party, but in no event shall such notice be given later than December 13, 2007. A termination penalty may not be charged to either party.

G. Neither party may, without the advance written approval of the other party, assign any right or delegate any duties under this MOU, nor may it transfer, pledge, surrender or otherwise encumber or dispose of its interest in any portion of this MOU.

H. It is understood and agreed that nothing contained is intended, or should be construed, as creating or establishing the relationship of partners between the parties, or as constituting either party as the agent or representative of the other for any purpose in any manner whatsoever. Neither party is authorized to bind the other to any contracts or other obligations, nor expressly or impliedly represent to any party that Harbor Branch and University are partners or that either party is the agent or representative of the other for any purpose or in any manner whatsoever.

I. Failure to exercise or delay in exercising any right, power or remedy accruing to either party on any breach or default of the other party shall not impair any such right, power

or remedy, or be construed as a waiver of any such breach or default or of any similar breach or default occurring; nor shall any waiver of any single breach or default be construed as a waiver of any other breach or default occurring.

J. This MOU embodies the entire agreement of the parties with respect to the subject matter covered herein, and there are no other representations, promises, agreements, conditions or understandings, either oral or written, between University and Harbor Branch other than are set forth. Any amendments, alterations or modifications to this MOU must be signed or initialed and approved by all signatories of this MOU. Nothing herein is intended to modify or supercede the parties' rights and obligations under the Personnel Services Agreement referenced in Section 8A(i) above.

K. In the event any provision of this MOU shall be held invalid or unenforceable by any court of competent jurisdiction or other applicable legal authority, such holding shall not invalidate or render unenforceable any other provision hereof.

L. No default, delay or failure to perform shall be considered a default, delay or failure to perform otherwise chargeable, hereunder, if such default, delay or failure to perform is due to causes beyond either party's reasonable control including, but not limited to, strikes, lockouts or inactions of governmental authorities; epidemics; war; embargoes, fire; earthquake; acts of God; default of common carrier. In the event of such default, delay or failure to perform, any date or times by which either party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the excused default, delay or failure to perform.

M. In the event of a default by either party, the non-defaulting party shall give written notice thereof to the defaulting party, specifying with particularity the nature of the default. If the default is not cured within twenty (20) days after receipt of the written notice, this Agreement may be terminated at the option of the non-defaulting party and/or the non-defaulting may pursue any and all remedies available at law or equity. In the event a notice of default is given, any date or times by which either party is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the period from the delivery of the notice of default to the cure of the default unless this Agreement is terminated by the non-defaulting party as provided above, in which event the time for such performance shall terminate upon termination of this Agreement.

N. All notices required to be given under this MOU shall be sent by certified mail to: FAU: Florida Atlantic University, Attn: Vice President, Finance, 777 Glades Road, ADM 373, Boca Raton, FL 33431-0991, with a copy to Florida Atlantic University, Attn: General Counsel, 777 Glades Road, ADM 367, Boca Raton, FL 33431-0991; HBOI: Harbor Branch Oceanographic Institution, Inc., Attn: Jim Seitz, 5600 U.S. 1 North, Fort Pierce, Florida 34946; with a copy to: William J. Stewart, Esq., Stewart & Evans, P.A. 3355 Ocean Drive, Vero Beach, FL 32963.

O. The provisions of Sections 1A, 2, 3, 4, 5, 6, 7, 9 and 11 shall survive the closing of the transactions contemplated in this MOU.

The parties hereto enter into this binding MOU as of the dates set forth below.

HARBOR BRANCH OCEANOGRAPHIC

FLORIDA ATLANTIC UNIVERSITY

INSTITUTION, INC.

By: _____

Name: Paul Yost

Title: Chairman

Date: _____

BOARD OF TRUSTEES

By: _____

Name: Frank T. Brogan

Title: President

Date: _____

Exhibit Index

Exhibit 1A1: Real Property

Exhibit 1A2: Restrictive covenants for the Real Property

Exhibit 5B: Restrictive covenants for the Harbor Branch Retained Real Property

Exhibit 9: Exceptions to representations & warranties

Exhibit 1A2
Restrictive Covenants for the Real Property

The use by the Grantee, its successors or assigns, of the Property conveyed to it by this deed, is restricted to the uses hereinafter described:

A campus for Florida Atlantic University, a public body corporate of the State of Florida ("FAU"), and for higher education and research, aquaculture, agriculture, oceanography, environmental science, marine science, engineering, bio-medical research and development, or related disciplines and research facilities supportive of those specific uses described herein together with uses appurtenant to the uses herein described, including without limitation, the operations of FAU's Harbor Branch Oceanographic Institute.

Exhibit 5B:
Restrictive Covenants for the Harbor Branch Retained Real Property

The real property owned by Harbor Branch Oceanographic Institution, Inc. ("HBOI") and located East of Highway US 1, is restricted to the uses hereinafter described:

1. The administrative offices of HBOI for use in conducting its activities as a Direct Supporting Organization of Florida Atlantic University, a public body corporate of the State of Florida ("FAU"), and for higher education and research, aquaculture, agriculture, oceanography, environmental science, marine science, engineering, bio-medical research and development, or related disciplines and research facility supportive of the specific uses described herein together with the uses appurtenant to the uses herein described.

2. Any lease, sublease, assignment or transfer of any interest or ownership, in whole or in part, of any of the Property restricted herein shall be for uses compatible with the foregoing uses and compatible with the use by FAU of the Property conveyed to it by HBOI, and shall further be subject to the consent and approval of FAU, which such consent and approval shall not be unreasonably withheld, conditioned, or delayed.

3. Excepted from the consent and approval required hereunder is any property conveyed to the State of Florida, St. Lucie County, or the St. Lucie County Mosquito Control District exclusively for conservation, recreational or passive uses, or uses compatible with the uses described in paragraph 1 above. Nothing herein shall preclude HBOI from transferring development rights on the Property in accordance with and pursuant to the Comprehensive Land Use Plan hereafter adopted by St. Lucie County and its supporting ordinances.

Exhibit 9
Exceptions to Representations & Warranties

Restrictions, easements, rights-of-way, exceptions, reservations, and other standard title exceptions of record that do not materially interfere with the current or continued operations on the Real Property and do not constitute a lien or impose any monetary or other affirmative obligations upon FAU or the Real Property.



Florida Atlantic University Board of Trustees Resolution

Wednesday, December 12, 2007

A RESOLUTION: A) APPROVING THE FINAL MEMORANDUM OF UNDERSTANDING WITH HARBOR BRANCH OCEANOGRAPHIC INSTITUTION, INC. AND B) AUTHORIZING THE PRESIDENT TO TAKE SUCH FURTHER ACTIONS AND TO EXECUTE SUCH DOCUMENTS AS ARE NECESSARY AND APPROPRIATE TO ACHIEVE THE PURPOSES OF THE MEMORANDUM OF UNDERSTANDING.

WHEREAS, the University Board has determined that the operations of Harbor Branch Oceanographic Institution, Inc. ("HBOI") would make a valuable addition to FAU's research and educational endeavors; and

WHEREAS, the State of Florida has appropriated funding to support the operations of HBOI as a part of FAU; and

WHEREAS, the University Board finds it necessary and desirable to authorize the approval of the final Memorandum of Understanding ("MOU") attached hereto to establish HBOI's operations as a research institute of FAU, to transfer certain assets of HBOI to FAU, and to delineate certain corollary agreements with respect to the transferring assets, the HBOI employees, and the reorganization of HBOI into a direct-support organization of FAU.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The University Board of Trustees hereby approves the final MOU with HBOI for (i) the acquisition by FAU of certain HBOI assets, including approximately 138 acres of real property, HBOI personal property, HBOI operation/research contracts, and intellectual property associated with current HBOI operations, and (ii) the delineation of certain corollary agreements with respect to the transferring assets, the HBOI employees, and the reorganization of HBOI into a direct-support organization of FAU.

2. The University Board of Trustees hereby authorizes and directs the President and his designees to do all acts and things required of them to achieve the purposes of the

MOU and in furtherance of this resolution, including without limitation execution of such documents, applications, instruments, or contracts in such form and content as the President or authorized officers executing the same deem necessary, desirable, or appropriate.

This Resolution shall become effective immediately upon passage.

CERTIFICATE OF THE CORPORATE SECRETARY

The Undersigned, Corporate Secretary of the Florida Atlantic University Board of Trustees, does hereby certify that the attached resolution is a true and accurate copy as adopted by the Florida Atlantic University Board of Trustees on December 12, 2007.

THE FLORIDA ATLANTIC
UNIVERSITY BOARD OF TRUSTEES

Dated: _____

By: _____
Corporate Secretary