



Item: VI.

Wednesday, July 30, 2008

SUBJECT: COOPERATIVE AGREEMENT WITH MAX PLANCK FLORIDA CORPORATION

PROPOSED BOARD ACTION

The Administration requests the Board of Trustees approve a Cooperative Agreement with Max Planck Florida Corporation ("MPFC").

BACKGROUND INFORMATION

On September 10, 2007, the Board of Trustees approved a resolution authorizing President Brogan to negotiate with the Max Planck Society in order to facilitate and establish a mutually beneficial collaborative relationship. Specifically, the Board authorized the President to negotiate with regard to four elements: (i) the extension of a sublease of approximately six acres of the FAU Jupiter Campus for the construction of a permanent facility; (ii) the design of a transitional plan for Max Planck to use a portion of the Scripps temporary buildings on the Jupiter Campus; (iii) the establishment of an academic and research affiliation agreement between Max Planck and FAU; and (iv) the use of approximately 10,000 square feet of classroom, office, and lecture space for FAU in the permanent facility.

The resolution reserved for the Board final approval over each element. After extensive negotiations with MPFC (the Max Planck Society's North American entity), Palm Beach County, and the State of Florida, we now bring to you a proposed Cooperative Agreement which encompasses the framework for the four elements previously noted. In particular, the Cooperative Agreement:

- (i) Establishes the research and academic affiliation between the University and MPFC in the areas of biomedical sciences and related fields;
- (ii) Establishes the framework for the negotiation of a short-term facilities use agreement for the Scripps T-2 building and for a portion of the Scripps T-1 building; and
- (iii) Establishes the framework for the negotiation of a long-term ground lease for the construction of a permanent 100,000 gross square foot facility for MPFC, which facility shall include 10,000 gross square feet to be jointly used by FAU and MPFC in support of the anticipated collaborative research and educational efforts.

IMPLEMENTATION PLAN/DATE

The research and academic affiliation between FAU and MPFC shall become effective upon approval of the Cooperative Agreement by both parties' governing boards. The facilities use agreement and long-term sublease are expected to be brought to the Board for final approval in the Fall of 2008. Occupancy of the temporary facilities by MPFC may occur upon the parties' completion and approval of the facilities use agreement and termination of occupancy by Scripps Florida, which is anticipated to occur by or during the first quarter of 2009. The sublease for the permanent facility will require approval by the Florida Division of State Lands, the MacArthur Foundation, and the Palm Beach County Commission, as well as this Board of Trustees and the governing board of MPFC.

FISCAL IMPLICATIONS

MPFC shall be responsible for all construction costs of the permanent facilities (through grants provided by Palm Beach County and the State of Florida), and for all utilities, services, and costs (other than FAU concurrency costs) attributable to MPFC's use and occupancy of the temporary facilities and the permanent facilities.

Supporting Documentation: Proposed Cooperative Agreement with Max Planck Florida Corporation

Presented by: President Frank T. Brogan Phone: 561-297-3450

COOPERATIVE AGREEMENT

This COOPERATIVE AGREEMENT (this “Agreement”), dated as of July 30, 2008 (the “Effective Date”), is made by and between the Florida Atlantic University Board of Trustees, a public body corporate of the State of Florida (“FAU”), and Max Planck Florida Corporation, a Florida not-for-profit corporation (“MPFC”).

WITNESSETH:

WHEREAS, the legislature of the State of Florida (the “State”) has determined that attracting, retaining and providing favorable conditions for the growth of certain high-impact facilities, including research and development facilities, provides widespread economic benefits to the citizens of the State through the increased tax base provided by the high-impact facility and its related sector businesses, through an enhanced entrepreneurial climate in the State and the resulting business and employment opportunities, and through the stimulation and enhancement of the State’s universities and community colleges;

WHEREAS, MPFC is a Florida not-for-profit corporation established by the Max Planck Society for the Advancement of Science, an independent, not-for-profit German research organization, that primarily promotes and supports cutting-edge basic research at its own internationally recognized institutes and that, through the establishment of MPFC in Florida, seeks to promote and support cutting-edge research in the sciences independently as well as in cooperation with Florida and US-based universities and research institutes and expedite drug discovery through state-of-the art technologies;

WHEREAS, pursuant to certain agreements with the State and Palm Beach County, MPFC has agreed to establish and operate a biomedical research institute in the State of Florida as the “Max Planck Florida Institute” (the “Institute”) and intends to locate such Institute at the MacArthur Campus of FAU in Jupiter, Florida subject to a sub-lease agreement that will be negotiated separately between FAU, MPFC, Palm Beach County and the State’s Division of State Lands;

WHEREAS, FAU is a public university funded by the State, and FAU is committed to serving its region, the State and the nation by supporting research and service that enhances economic, human and cultural development, as proclaimed in its mission statement;

WHEREAS, FAU often meets this goal through collaborations with other educational and research institutions;

WHEREAS, FAU has determined that the philosophy of MPFC which emphasizes the pursuit of fundamental scientific advances and the training of researchers to prepare them to meet the scientific challenges of the next century is consistent with FAU's goals and mission;

WHEREAS, FAU has physical facilities in its John D. MacArthur Campus, commonly known as "T1 and T2", which currently house the temporary facilities of Scripps Florida, that may be suitable for use by MPFC on a temporary basis while its permanent facilities are constructed in Palm Beach County, Florida;

WHEREAS, FAU has identified approximately six acres of land in its John D. MacArthur Campus which was donated to it by the John D. and Catherine T. MacArthur Foundation (the "MacArthur Foundation") that MPFC has indicated would be a desirable location for establishment of permanent facilities for MPFC's Florida Institute and which FAU is prepared to provide rent-free to MPFC;

WHEREAS, FAU and MPFC desire to identify certain academic, financial and administrative arrangements to accommodate cooperative educational and research related activities with respect to biomedical sciences and related fields; and

WHEREAS, this Agreement, which recognizes the unique expertise available at both FAU and MPFC with respect to biomedical sciences and related fields, will (i) facilitate interchange between the staff and scientists of MPFC and the faculty and students of FAU and (ii) establish a mechanism for cooperative research, educational activities and the use of facilities and equipment between MPFC and FAU.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained this Agreement, and intending to be legally bound, FAU and MPFC hereby agree as follows:

ARTICLE I DEFINITIONS

1.01 Definitions. Except as otherwise expressly provided herein, capitalized terms used in this Agreement shall have the respective meanings assigned to such terms in Exhibit A hereto.

1.02 Interpretation. Whenever used in this Agreement, except as otherwise expressly provided or unless the context otherwise requires, any noun or pronoun shall be deemed to include the plural as well as the singular

and to cover all genders. Whenever used in this Agreement, unless otherwise specified, the terms “hereof,” “herein,” “hereunder” and similar terms refer to this Agreement as a whole, and references herein to Sections refer to specified sections of this Agreement. The term “including” when used herein shall be deemed to mean “including, without limitation” and “including, but not limited to.” All Exhibits attached hereto are incorporated herein by reference.

ARTICLE II COOPERATIVE EFFORTS

Subject to different arrangements to be established between FAU and MPFC in writing, FAU and MPFC agree to enter into cooperative efforts as provided in this Article II:

2.01 Cooperative Opportunities. FAU and MPFC desire to develop and enter into cooperative activities on a non-exclusive basis for the purpose of promoting education and research in areas involving biomedical science and related fields. It is hereby agreed that MPFC’s scientists and FAU’s faculty, staff and students will work jointly and cooperatively on planned educational and research activities of mutual interest pursuant to this Agreement. Those activities will be planned, mutually agreed to by the parties and reduced to writing as addenda to this Agreement. Each such addendum shall specifically reference this Agreement. The specific objectives of this Agreement include, without limitation, (a) planning and implementing cooperative research and educational activities relating to biomedical science, (b) jointly seeking sources of external support to fund the cooperative efforts, (c) providing technical and professional education and training on undergraduate, graduate and professional levels in the fields of biomedical science and related sciences, (d) disseminating non-proprietary research findings through a variety of methods (including publications, seminars and workshops), (e) sharing physical facilities and support services in order to expand and provide more cost-effective research projects, and (f) exploring the feasibility of working cooperatively in the joint recruitment of faculty, especially as Eminent Scholars or Endowed Chairs.

2.02 Affiliate Faculty Appointments. FAU shall consider affiliate faculty appointments in relevant colleges for qualified MPFC’ scientists and staff nominated by MPFC for such affiliate faculty appointments. FAU shall review such nominees in accordance with the standards and procedures that FAU would use for similar type and level positions. Scientists and staff of MPFC who are accepted by FAU for affiliate faculty appointments will (a) have the opportunity to conduct seminars and teach courses in their areas of

specialization, as the need arises and as mutually agreed upon by FAU and such scientists or staff, (b) be permitted to advise graduate students or participate on doctoral dissertation committees in accordance with FAU's regulations, policies and procedures, and (c) have the same privileges afforded to FAU faculty on such appointments.

2.03 Terms Related to Cooperative Efforts.

(a) Except as set forth herein or as may be mutually agreed in writing by the parties, each party shall be responsible for all salaries or benefits for its own employees. Neither party shall be responsible for the other party's employees. The parties hereby acknowledge that circumstances may require employees of either party to be assigned activities that are supported by the other party. The parties agree that in such circumstances, the parties shall mutually agree in writing, in advance of assigning any such activities, as to the financial considerations, if any, associated with such assignments.

(b) Any joint cooperative projects shall be mutually agreed in writing by the parties, and in any such joint cooperative project, each party shall (i) cooperate in outlining, planning and developing joint efforts, research, education and training, (ii) appoint or designate personnel to assist in developing, planning and implementing cooperative research and joint educational projects; and (iii) make personnel available, as appropriate, for cooperative projects; provided, however, that all such employees must be authorized under federal laws to work in the United States and to engage in the activities contemplated by this Agreement. Additional terms of any joint cooperative project shall be negotiated and mutually agreed in writing by the parties.

(c) Within one year after the Effective Date, MPFC and FAU shall discuss establishment of a coordinating board (the "Coordinating Board") to review, plan and coordinate collaborative activities under this Agreement. Unless otherwise agreed between FAU and MPFC, it is anticipated that: (i) The Coordinating Board will consist of at least two members from each party for a total of four members; provided, however, that additional members may be added as deemed appropriate; (ii) The Coordinating Board will be co-chaired by one member from each party; and (iii) The Coordinating Board shall meet at least annually to review, plan and coordinate cooperative projects. Although the Coordinating Board will assist in reviewing, planning and coordinating cooperative projects, all such cooperative projects shall require the prior written agreement of the parties prior to proceeding in the form of an addendum to this Agreement. The

members of the Coordinating Board shall not have the authority to bind or otherwise act on behalf of the MPFC or FAU with respect to any cooperative project.

(d) All real or personal property purchased for use in cooperative research or activities by either party shall remain the sole property of the party purchasing such property. MPFC and FAU shall each maintain their respective equipment inventories for equipment used in cooperative research. Such equipment inventories shall include ownership, cost, condition and the availability of the equipment for the cooperative research.

(e) To the extent mutually agreed upon in writing by the parties and in accordance with any applicable grant award, FAU, MPFC or both will provide or procure the following support services for the cooperative projects: (i) office, laboratory and conference space; (ii) parking, security and library access and services; (iii) utilities, maintenance and janitorial services; and (iv) access to the parties' computer systems, including internet linkage.

(f) Any joint cooperative project shall provide an agreed procedure and mechanism for notifying the other party of any invention created pursuant to such joint cooperative project. Inventions, whether patentable or not, that are made pursuant to a Joint Project shall be owned either jointly or severally, as the case may be, in accordance with the written agreement of the parties. Inventions will be considered made pursuant to a "Joint Project" if and only if (i) inventors from both FAU and MPFC (including inventors associated with any affiliate of MPFC) are involved in the discovery of the invention and (ii) the project that leads to the invention has been designated, in advance and in writing by the parties, as a joint project. Invention rights will be determined in accordance with United States patent law and the mutual agreement of the parties. Terms and conditions of patent prosecution and maintenance of joint inventions, as well as licenses to any jointly-owned intellectual property resulting from this Agreement, will be negotiated in good faith, agreed upon in writing and included as an addendum to this Agreement. Both FAU and MPFC agree to execute any and all documentation reasonably necessary to achieve the commercialization of any intellectual property arising from cooperative activities performed under this Agreement.

(g) The parties recognize the need to maintain secrecy of confidential or proprietary information disclosed during discussions related to research, development and business collaborations, as well as during the performance of biomedical research under this

Agreement. To the extent possible, communication of any such confidential information should be in writing, marked as confidential. Provided the confidential nature of a communication is disclosed by the provider and acknowledged by the recipient, failure to reduce all communications to writing or to mark a writing as confidential shall not affect the confidential nature of such communication. Unless otherwise mutually agreed in writing by the parties, for a period of five years from the date of disclosure and notwithstanding the expiration of this agreement, neither party shall disclose any such confidential information received from the other party to any third parties or use such confidential information for any purpose other than to evaluate a potential cooperative project between the parties, except as required by law. Unless otherwise required by law, the parties shall only disclose such confidential information to those employees or representatives that have a need to know such confidential information, provided that each such employee or representative is bound by similar obligations of confidentiality and non-use. The confidentiality and non-use requirements of this Section 2.03(g) shall not apply to information that (i) at the time of disclosure is publicly known; (ii) becomes publicly known without any breach of this Agreement by the receiving party; or (iii) that is disclosed pursuant to the order of any court of competent jurisdiction. Notwithstanding the foregoing, each party shall be free to publish or otherwise publicly disclose the results of activities conducted pursuant to this Agreement with respect to any joint cooperative projects to the extent that public disclosure will not result in the disclosure of otherwise confidential information or know-how or cause the loss of intellectual property rights; provided, however, that at least ninety (90) days prior to making any such publication or other public disclosure, such party shall provide the other party a draft of the proposed disclosure to afford an opportunity for comment and protection of the confidential information, know-how, or intellectual property rights. Failure to object in writing to such publication or other public disclosure shall be deemed a waiver by the party entitled to object or comment. Each party agrees to reference or acknowledge the other party's contributions, as scientifically appropriate.

(h) The parties agree to seek funding for collaborative research and education activities. Depending on how the funds are awarded, either party may be the prime contractor and that party will be responsible for administering funds through a subcontract to the other party. Any such prime contractor and subcontractor relationship shall be consistent with the grant award. The specific terms and conditions of any subcontractor relationship shall be subject to written agreement between the parties.

2.04 Term of Cooperative Efforts. The agreement of the parties to develop and enter into cooperative activities and consider affiliate faculty appointments shall end ten years after the Effective Date; provided, however, that either party shall have the right to terminate the cooperative efforts described in this Article II by providing ninety (90) days prior written notice to the other party. Unless otherwise agreed by the parties, all ongoing cooperative projects will be allowed to continue until completion. The foregoing shall not apply to any mutual participation in activities involving students. All activities involving students shall continue until the student has completed his or her objective, or until substitute adequate written arrangements are made assuring student progress without adverse academic consequences to the student.

ARTICLE III TEMPORARY FACILITIES

3.01 Use of Temporary Facilities. Subject to the terms of a temporary facilities sub-lease agreement to be negotiated and executed between the parties, FAU agrees that it will make space available rent-free to MPFC for a fixed term in T2 (consisting of approximately 33,170 gross square feet of research laboratory and office space) and in the vivarium and robotics facility in T1 (consisting of approximately 5877 gross square feet), all as more particularly described in Exhibit B attached hereto (the “Temporary Facilities”). Within sixty (60) days of the Effective Date, FAU will make available to MPFC, to the extent it has not previously done so, a written description of the improvements and fixtures (“Improvements”) that appertain to T1 and T2 that are expected to remain or that may remain on the premises subsequent to the termination of occupancy of T1 and T2 by Scripps Florida, which currently is anticipated to occur by or during the first quarter of 2009. Within thirty (30) days of its receipt of the Improvements list, MPFC will notify FAU of (i) the approximate amount of gross square footage it will require at the Temporary Facilities; (ii) the anticipated occupancy date of the Temporary Facilities; (iii) whether any fixtures other than those on the Improvements list will be required; and (iv) the anticipated length of time it intends to occupy the Temporary Facilities. Any agreement for occupancy of the Temporary Facilities will provide for an extension of the term upon no less than six months notice by MPFC that it will require an extension.

3.02 Authorized Uses for the Temporary Facilities. The parties anticipate the MPFC will be able to use the Temporary Facilities for scientific research, training, administration, educational and related functions. Any other uses are expressly prohibited and shall not be permitted without the prior written consent of FAU. Any material alterations or modifications to Temporary Facilities require the prior written consent of FAU.

3.03 Utilities and Other Services. Within sixty (60) days of the Effective Date, FAU shall provide to MPFC written estimates of the cost of providing the Temporary Facilities with electricity, water, routine janitorial service and support service (such as maintenance, mail/receiving, security, telecommunications switch and high-speed internet access) equivalent to the utilities and services provided to similar FAU users, as well as an estimate of FAU's increased costs reasonably attributable to MPFC for these utilities and services. It is expressly understood and agreed that in the event a sub-lease for Temporary Facilities is executed, MPFC, at its sole cost and expense, shall be liable and responsible for all utilities, services, and costs attributable to it.

3.04 Safety Requirements. FAU's Department of Environmental Health and Safety ("EHS") is responsible for providing and ensuring a safe and healthy environment for students, faculty, staff and visitors on all FAU campuses and facilities. EHS is also the primary contact for federal, state and local regulatory agencies regarding matters of health, safety and environmental issues on all FAU campuses and facilities. Within sixty (60) days of the Effective Date, (i) FAU will provide to MPFC a list of the expected licenses, certificates and safety issues for MPFC during its occupancy of the Temporary Facilities; and (ii) an estimate of the costs expected to be incurred by EHS in the coordination and enforcement of health, safety and environmental issues associated with MPFC's occupancy of the Temporary Facilities equivalent to the costs associated with providing such services to similar FAU users, including, without limitation, the salary of any personnel dedicated to servicing MPFC (on a prorated basis if other users are serviced by the same employee). It is expressly understood and agreed that in the event a sub-lease for Temporary Facilities is executed, MPFC, at its sole cost and expense, shall be liable and responsible for all such costs incurred.

3.05 Compliance with Laws, Ordinances and Regulations. Any sub-lease for Temporary Facilities will require MPFC to comply with all applicable laws of the United States and the State of Florida, or of any political subdivision or agency of either, the applicable ordinances of Palm Beach County and the Town of Jupiter, and all applicable regulations and policies of FAU set forth on the FAU policies and regulations webpage (<http://www.fau.edu/policiesregulations.php>), as the same may be amended from time to time. It is expressly understood and agreed that in the event a sub-lease for Temporary Facilities is executed, MPFC, at its sole cost and expense, shall be liable and responsible for obtaining, paying for, and maintaining on a current basis, and for fully complying with, any and all permits, licenses, and other government authorizations, as may be required during MPFC's occupancy of the Temporary Facilities by any federal, state, or governmental entity or any judicial body having jurisdiction over FAU or

MPFC or their operations or activities, for the activities and operations of MPFC conducted in the Temporary Facilities. FAU shall, where deemed appropriate, give its full cooperation to MPFC as necessary to obtain and/or hasten the obtaining of any required permit or license.

3.06 Signage. Any sub-lease for Temporary Facilities will provide that MPFC may purchase, install and maintain appropriate exterior signs identifying its use of the Temporary Facilities, subject to the prior approval of FAU, which approval shall not be unreasonably withheld.

ARTICLE IV SUB-LEASE FOR PERMANENT FACILITIES

4.01 Sub-Lease for Permanent Facilities. FAU and MPFC agree to enter into good faith negotiations with each other and with Palm Beach County and the Florida Division of State Lands for the sub-lease of approximately six acres rent-free, as more particularly described in Exhibit C, at FAU's John D. MacArthur Campus for the construction of MPFC's permanent facilities, consisting of approximately 100,000 gross square feet ("Permanent Facilities"). Such sub-lease shall be subject to the approval of FAU's and MPFC's governing boards, the Florida Division of State Lands, and the MacArthur Foundation. It is expressly understood and agreed that in the event a sub-lease for Permanent Facilities is executed, MPFC, at its sole cost and expense, shall be liable and responsible for all utilities, services, and costs (other than FAU concurrency costs) attributable to it, and for obtaining, paying for, and maintaining on a current basis, and for fully complying with, any and all permits, licenses, and other government authorizations, as may be required for the permanent facilities during MPFC's occupancy of the Permanent Facilities by any federal, state, or governmental entity or any judicial body having jurisdiction over FAU or MPFC or their operations or activities, for the activities and operations of MPFC conducted in the Permanent Facilities.

4.02 Permitted Uses of Permanent Facilities. The parties agree that MPFC may use such Permanent Facilities for the following purposes: scientific research, training, education, administration and related functions. Prior to entering into any sub-lease, MPFC and FAU shall make reasonable good faith efforts to inform and discuss with each other how the Permanent Facilities shall be designed and constructed to facilitate the cooperative efforts described in Article II of this Agreement, including but not limited to the inclusion of approximately 10,000 gross square feet for (a) conference facilities with capacity for approximately 100 seats to be jointly used by FAU and MPFC for the enhancement of the collaborative relationship, as well as (b) classrooms, work-space, laboratory, or conference areas available for joint use by FAU and MPFC in connection with the

anticipated joint cooperative efforts foreseen in Article II of this Agreement; FAU access to the MPFC Permanent Facilities; and signage, all subject to agreement as to the specific terms and conditions of such use and the financial and operational aspects of joint use of such facilities. Except as provided in the sub-lease, MPFC shall have sole discretion in the design and construction of the Permanent Facilities.

4.03 FAU Campus Master Plan. FAU agrees to use its reasonable good faith efforts to incorporate the Permanent Facilities into its Campus Master Plan and to seek any necessary approvals to facilitate the construction of the Permanent Facilities with as few delays as reasonably possible. Specifically, FAU will advise MPFC as soon as practicable, and in no event later than sixty (60) days from the Effective Date, of the capacity reserved and available in its Master Plan for the square footage required for MPFC, water needs (fire mains and domestic), sanitary sewer and landscape irrigation plus any additional infrastructure required to serve the needs of a 100,000 square foot research laboratory with office space as contemplated by MPFC.

ARTICLE V MISCELLANEOUS PROVISIONS

5.01 Term; No Assignment; Binding Effect. Except as provided in Sections 2.03 and 2.04, the term of this Agreement shall be two (2) years unless a temporary use and long-term sub-lease are signed prior to the expiration of this term. Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any party without the prior written consent of the other Party and any attempt to do so will be void, except for assignment by MPFC of any portion of this Agreement other than Article IV to (a) a wholly-owned subsidiary incorporated and organized by MPFC to hold the assets of MPFC, or (b) any successor-in-interest to all or substantially all of the assets of MPFC; provided, however, that any such subsidiary or successor-in-interest must (i) assume in writing all of the rights and obligations of MPFC under this Agreement and (ii) be a not-for-profit entity. Any merger, consolidation or reorganization of MPFC that results in a change of control shall be deemed an assignment for purposes of this Section 5.01. It is expressly understood and agreed that the limited rights of assignment granted to MPFC pursuant to this Section 5.01 do not include any right to assign any portion of Article IV of this Agreement or any right, interest or obligation therein without the prior written consent of FAU. Subject to this Section 5.01, this Agreement is binding upon, inures to the benefit of and is enforceable by the parties and their respective successors and permitted assigns.

5.02 No Third Party Beneficiary. The terms and provisions of this Agreement are intended solely for the benefit of each party and their respective successors or permitted assigns, and it is not the intent of the parties to confer third-party beneficiary rights upon any other Person.

5.03 Entire Agreement. This Agreement supersedes all prior discussions and agreements among the parties with respect to the subject matter hereof and contain the sole and entire agreement among the parties with respect to the subject matter hereof.

5.04 Waiver. Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

5.05 Notices. All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given if delivered by: (i) hand delivery; (ii) certified mail, return receipt requested (postage prepaid); nationally recognized overnight commercial courier (charges prepaid); or (iv) facsimile (with confirmation of transmission) to each of the parties as follows:

If to FAU: Florida Atlantic University
777 Glades Road
Boca Raton, Florida 33431
Attention: Provost
Facsimile Number: (561) 297-3942

with a copy to: Florida Atlantic University
777 Glades Road
Boca Raton, Florida 33431
Attention: General Counsel
Facsimile Number: (561) 297-2787

If to MPFC: Max Planck Florida Corporation

Attention: Peter Gruss, Sole Trustee

with a copy to: McDermott Will & Emery LLP
201 S. Biscayne Blvd., 22nd Floor

Miami, Florida 33131
Attention: Raquel A. Rodriguez, Esq.
Facsimile Number: (305) 347-6500

All such notices, requests and other communications shall be deemed to have been given and received: (i) if by hand delivery, upon delivery (ii) if by certified mail, upon receipt or refusal; (iii) if by overnight courier, on the date shown on the courier's receipt as of the date of actual delivery; and (iv) if by facsimile, on the date shown on the confirmation of transmission.

5.06 Amendment. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each party.

5.07 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, and (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom.

5.08 Governing Law. This Agreement shall be governed by the laws of the State of Florida, without regard to principles of conflicts of laws. MPFC hereby acknowledges that under Florida law, FAU is entitled to the benefits of sovereign immunity, including immunities from taxation, and FAU is subject to the requirements of Florida's public records laws, Chapter 119, Florida Statutes, together with all applicable exemptions. If either party is required to obtain any permit, license or authorization from any governmental authority as a prerequisite to perform its obligations, the cost shall be borne by the party required to obtain such permit, license or authorization.

5.09 Consent to Jurisdiction. Each of the parties hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought in any of the courts of the State of Florida located in Palm Beach County, Florida having subject matter jurisdiction and, by execution and delivery of this Agreement and such other documents executed in connection herewith, each party hereby (i) accepts the non-exclusive jurisdiction of the aforesaid courts, (ii) irrevocably agrees to be bound by any final judgment (after any all appeals) of any such court with respect to such documents, (iii) irrevocably waives to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings with respect to such documents brought in any such court, and further irrevocably waives to the fullest extent permitted by law,

any claim that any such suit, action or proceedings brought in any such court has been brought in an inconvenient forum, (iv) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such party at the address set forth in Section 5.05, or at such other address of which the other party has been notified, and (v) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or limit the right to bring suit, action or proceeding in any other jurisdiction. Prior to commencement of any litigation, the parties will attempt to resolve any differences between them by conciliation and negotiation at the operational level. In the event such efforts fail to resolve the dispute within fifteen (15) days, the dispute shall be referred to the senior-most executive level of each party for direct conciliation and negotiation. Failing agreement at the senior-most executive level within five (5) days, the parties will submit the dispute to non-binding mediation before a mediator mutually acceptable to both parties. If after good faith effort the parties are unable to resolve their dispute in mediation within thirty (30) days, either party may commence legal proceedings.

5.10 Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

5.11 Headings. The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

5.12 Time is of the Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

5.13 Counterparts. This agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

5.14 Public Access. The parties shall comply with the provisions of Chapter 119, Florida Statutes, as amended, together with all applicable exemptions, to the extent such provisions are applicable and required.

5.15 Appropriation of Funds. The performance by FAU of its obligations under this Agreement shall be subject to and contingent upon the availability of funds appropriated by the legislature and approved by the governor of the State. FAU shall provide MPFC with written notice of the non-availability within thirty (30) days of the date that FAU learns that the legislature has not appropriated or the governor has not approved sufficient funds for FAU to perform its obligations hereunder.

5.16 Relationship of the Parties. It is understood and agreed that nothing contained in this Agreement is intended to or should be construed, as creating or establishing the relationship of partners between the parties, or as constituting either as the agent or representative of the other for any purpose in any manner whatsoever. Neither MPFC nor FAU is authorized to bind the other to any contracts or other obligations nor shall either party expressly or impliedly represent to any party that MPFC and FAU are partners or that either is the agent or representative of the other for any purpose or in any manner whatsoever. The parties agree to cooperate with each other to achieve their respective compliance.

5.17 Force Majeure. No party to this Agreement shall be responsible for any delays or failure to perform any obligation under this agreement due to acts of god, strikes or other disturbances, including, without limitation, war insurrection, embargoes, governmental restrictions, acts of government or governmental authorities, any other cause beyond the reasonable control of such party. During an event of force majeure, the parties' duties to perform obligations shall be suspended.

[Remainder of page intentionally left blank; next page is signature page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers as of the date first above written.

FLORIDA ATLANTIC UNIVERSITY

By: _____
Name:
Title:

MAX PLANCK FLORIDA
CORPORATION

By: _____
Name: Peter Gruss
Title: Sole Trustee

EXHIBIT A
DEFINITIONS

“***Agreement***” has the meaning set forth in the introductory paragraph.

“***EHS***” has the meaning set forth in Section 3.04.

“***FAU***” has the meaning set forth in the introductory paragraph.

“***Joint Projects***” has the meaning set forth in Section 2.03(f).

“***State***” has the meaning set forth in the Recitals.

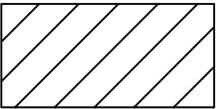
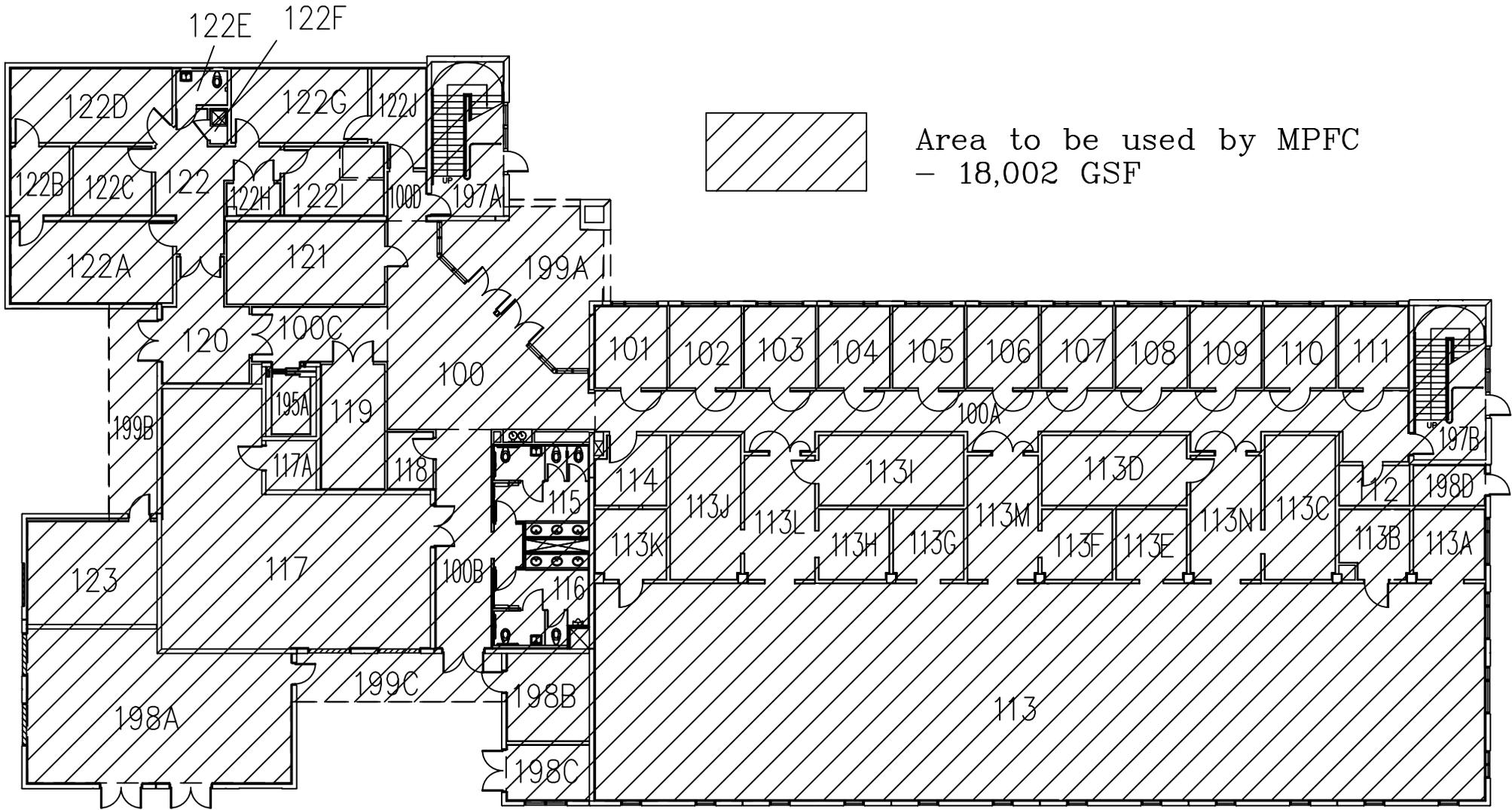
“***Temporary Facilities***” has the meaning set forth in Section 3.01.

“***MPFC***” has the meaning set forth in the introductory paragraph.

“***Permanent Facilities***” has the meaning set forth in Section 4.01.

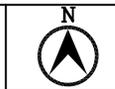
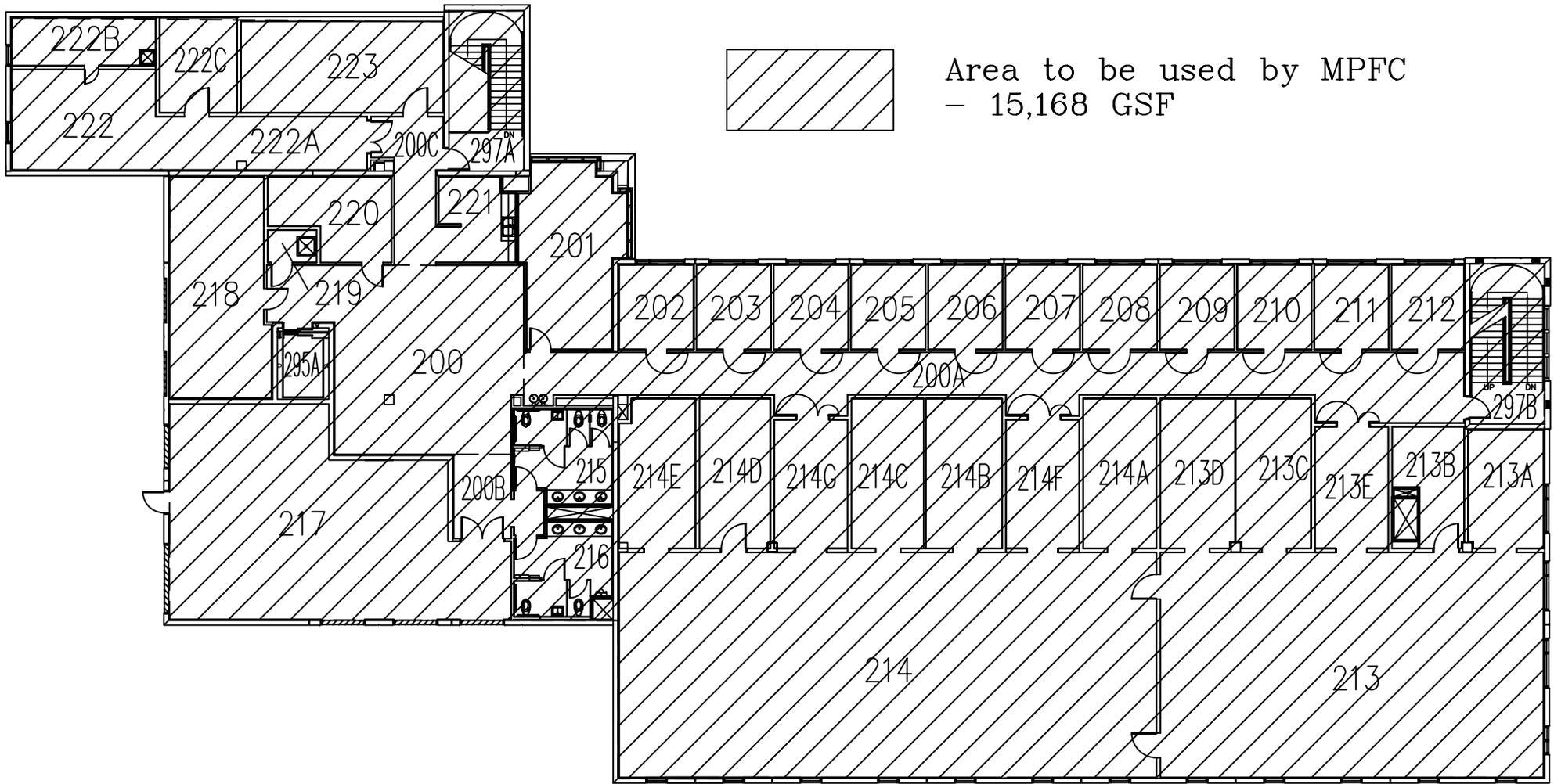
EXHIBIT B
DESCRIPTION OF TEMPORARY FACILITIES

[See three diagrams attached]



Area to be used by MPFC
- 18,002 GSF







Area to be used by MPFC - 5,877 GSF

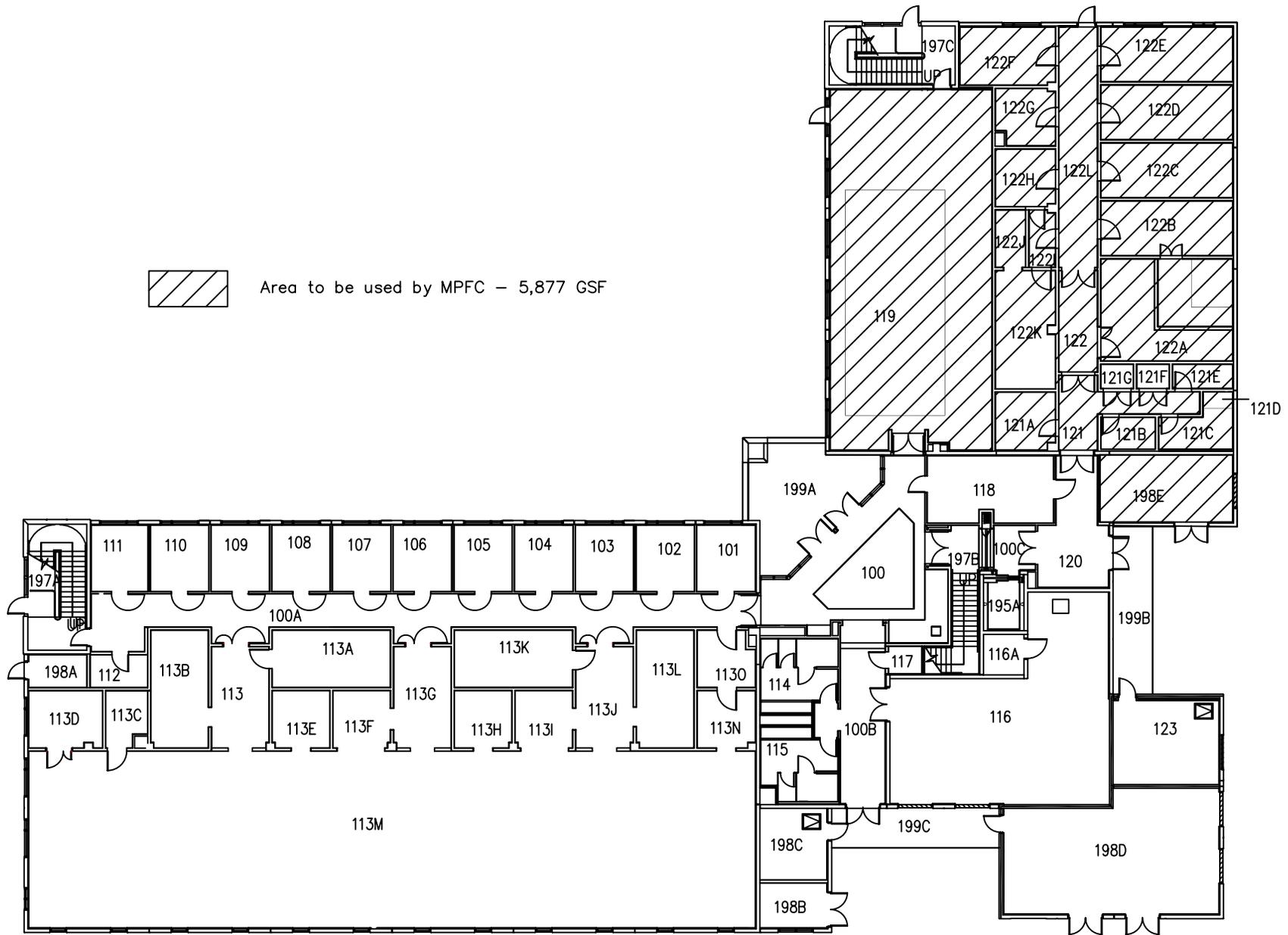


EXHIBIT C
DESCRIPTION OF PERMANENT FACILITIES

[To come]