

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, fields;

- (ii) Establishes the framework for the negotiation of a short term facilities use agreement for 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 construct of a permanent 100,000 gross square foot facility for MPFC, which facility shall include 10,0 gross square feet to be jointly used by FAU and MPFC in support of the anticipa collaborative research and educational efforts.

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. MacAurthur 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:

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)

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 2.04 <u>Term of Cooperative Efforts</u>. 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; <u>provided</u>, <u>however</u>, 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 <u>Authorized Uses for the Temporary Facilities</u>. 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 <u>Utilities and Other Services</u>. 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 <u>Compliance with Laws, Ordinances and Regulations</u>. Any sublease 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 <u>Signage</u>. 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 <u>C</u>, 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 <u>Permitted Uses of Permanent Facilities</u>. 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 <u>FAU Campus Master Plan.</u> 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

5.02 <u>No Third Party Beneficiary</u>. 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 <u>Entire Agreement</u>. 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 <u>Waiver</u>. 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 <u>Notices</u>. 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 <u>Amendment</u>. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each party.

5.07 <u>Invalid Provisions</u>. 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 <u>Governing Law</u>. 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 subjec

5.15 <u>Appropriation of Funds</u>. 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 MP1(a)-3(I)rov Fo8BTBT1 0 0 1 497.98 679.42 Tm²

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

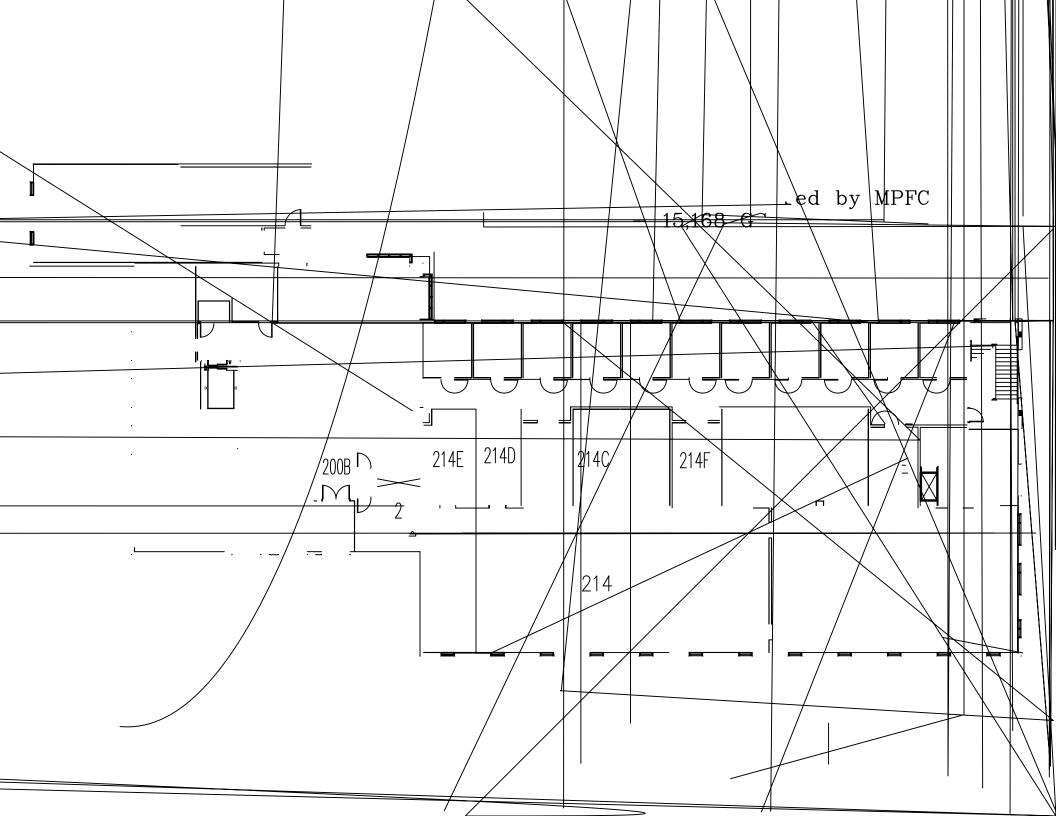
By: _____ Name: Peter Gruss Title: Sole Trustee

EXHIBIT A DEFINITIONS

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II	" has the meaning set forth in the introductory paragraph.
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EXHIBIT B DESCRIPTION OF TEMPORARY FACILITIES

[See three diagrams attached]



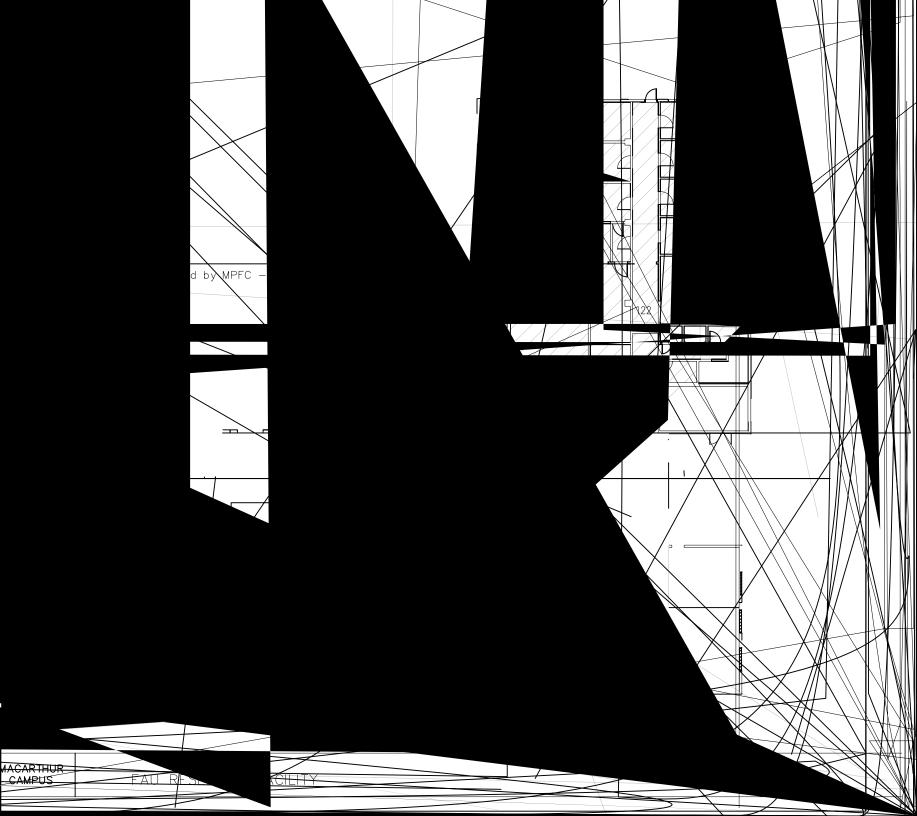


EXHIBIT C DESCRIPTION OF PERMANENT FACILITIES

[To come]