FAU
BOARD OF TRUSTEES
Florida Atlantic University

Item: VI. SP: A-1

Wednesday, May 28, 2008

SUBJECT: Harbor Branch Oceanographic Institution Foundation, Inc.

PROPOSED BOARD ACTION

Adopt a Board of Trustees resolution certifying that the Harbor Branch Oceanographic Institution Foundation, Inc. ("HBOIF") is operating in a manner consistent with the goals of the university and in the best interest of the state, and establishing HBOIF as a direct-support organization of FAU, pursuant to Section 1004.28, Florida Statutes.

BACKGROUND INFORMATION

On December 31, 2007, the operating assets of Harbor Branch Oceanographic Institution, Inc. ("HBOI") were formally transferred and integrated into FAU. The transferred assets are now an FAU research institute and operating as the Harbor Branch Oceanographic Institute at FAU ("HBOI at FAU").

The former HBOI corporate entity has now been formally reorganized and renamed as HBOIF. HBOIF is a Florida not-for-profit corporation organized and operated exclusively to receive, hold, invest and administer property and to make expenditures to or for the benefit of FAU and HBOI at FAU. The HBOIF Articles and By-Laws provide that the FAU Chair of the Board of Trustees shall have one appointment to the HBOIF Board of Directors and the FAU President or his designee shall serve on the HBOIF Board. The HBOI endowment and debt liabilities were retained by HBOIF.

HBOIF is an entity separate and apart from the Florida Atlantic University Foundation ("FAUF"). FAUF and HBOIF have already been engaged in considerable discussions to facilitate cooperative efforts between the two organizations to maximize strategies, efficiencies and resources for the ultimate benefit of both FAU and HBOI at FAU.

Before an eligible entity may be deemed a university direct-support organization under Florida law, the University Board of Trustees must certify that the entity is operating in a manner consistent with the goals of the university and in the best interest of the state.

IMPLEMENTATION PLAN/DATE

Upon certification by the FAU Board of Trustees. Certification by the FAU Board of Trustees is the only outstanding step necessary to establish the direct-support organization status of HBOIF. HBOIF satisfies the statutory requirements in all other respects. The proposed resolution was approved unanimously by the FAU Board of Trustees Strategic Planning Committee on May 7, 2008.

FISCAL IMPLICATIONS

A university direct-support organization may be authorized to use property, facilities and personal services at the university, subject to budget and audit review and oversight. Gifts received by a direct-support organization on behalf of a state university are provided the opportunity to receive state matching funds in accordance with applicable state law. HBOIF's status as an FAU direct-support organization is anticipated to facilitate and enhance revenues and fundraising efforts for HBOI at FAU.

Supporting Documentation: Proposed Resolution
HBOIF Bylaws & Articles of Incorporation

Presented by: David L. Kian, General Counsel Phone: 561-297-3007

FAU
BOARD OF TRUSTEES
Florida Atlantic University

Florida Atlantic University Board of Trustees Resolution

Wednesday, May 28, 2008

A RESOLUTION: (I) CERTIFYING THAT THE HARBOR BRANCH OCEANOGRAPHIC INSTITUTION FOUNDATION, INC. IS OPERATING IN A MANNER CONSISTENT WITH THE GOALS OF THE UNIVERSITY AND IN THE BEST INTEREST OF THE STATE AND (II) ESTABLISHING THE HARBOR BRANCH OCEANOGRAPHIC INSTITUTION FOUNDATION, INC. AS A UNIVERSITY DIRECT-SUPPORT ORGANIZATION

WHEREAS, on December 31, 2007, the operating assets of Harbor Branch Oceanographic Institution, Inc. ("HBOI") were formally transferred to FAU; and

WHEREAS, the HBOI assets transferred to FAU are now operating as an FAU research institute known as the Harbor Branch Oceanographic Institute at FAU ("HBOI at FAU"); and

WHEREAS, the former HBOI corporate entity has now been formally reorganized and renamed as the Harbor Branch Oceanographic Institution Foundation, Inc. ("HBOIF"); and

WHEREAS, HBOIF is a Florida not-for-profit corporation organized and operated exclusively to receive, hold, invest and administer property and to make expenditures to or for the benefit of FAU and HBOI at FAU; and

WHEREAS, the FAU Board finds that HBOIF is operating in a manner consistent with the goals of the university and in the best interest of the state; and

WHEREAS, the FAU Board finds it desirable that HBOIF be deemed a direct-support organization of FAU, pursuant to Section 1004.28, Florida Statutes.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The FAU Board of Trustees hereby certifies that HBOIF is operating in a manner consistent with the goals of the university and in the best interest of the state.

2. The FAU Board of Trustees hereby resolves that HBOIF is a direct-support organization of the university, pursuant Section 1004.28, Florida Statutes.

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 May 28, 2008.

THE FLORIDA ATLANTIC UNIVERSITY
BOARD OF TRUSTEES

Dated: _____

By: _____
Corporate Secretary

SECOND AMENDED AND RESTATED BYLAWS

OF

HARBOR BRANCH OCEANOGRAPHIC INSTITUTION FOUNDATION, INC.

Adopted as of December 31, 2007,
Effective as of December 31, 2007

ARTICLE I

Name and Offices

Section 1.1 Name. The name of this corporation is Harbor Branch Oceanographic Institution Foundation, Inc. formerly known as Harbor Branch Oceanographic Institution, Inc. and Harbor Branch Institution, Inc. (hereinafter referred to as the "Corporation").

Section 1.2 Offices. The registered office of the Corporation shall be at such location in the State of Florida as may be appointed by the Board of Directors. The Corporation also may have offices at such other places as the Board of Directors from time to time may determine or the purposes of the Corporation may require.

ARTICLE II

Members

Section 2.1 Members. The Members of the Corporation shall consist of all those individuals elected, appointed, or serving *ex officio* as Directors of the Corporation in accordance with the Articles of Incorporation and these Bylaws. Each Member, except for non-voting Directors, shall be entitled to one (1) vote.

Section 2.2 Annual Meeting for the Election of Directors. There shall be an annual meeting of Members for the election of Directors. Such meeting shall be held at a place within or without the State of Florida to be determined by the Members in November or

December of each year and shall be called by the Secretary of the Corporation upon the request of the Chairperson of the Board. The Members shall be provided with at least ten (10) days written notice before each annual meeting. The Chairperson of the Board shall preside over the meeting. Directors shall be elected by a majority vote of the Members. Meetings of the Members shall be held in accordance with the requirements of Florida Statute Section 286.011. The minutes of such meeting shall be promptly recorded, and such records shall be open to public inspection.

Section 2.3 Voting. Members shall vote at meetings in person and not by proxy. Each Member, except for non-voting Directors, shall be entitled to one (1) vote. The act of a majority of the votes which at any time are authorized to be cast by all of the Members of the Corporation shall be the act of the Members.

Section 2.4 Electronic Meetings. Any or all Members may participate in the annual meeting of the Members by, or conduct the meeting through the use of, any means of communication by which all Members participating may hear each other simultaneously during the meeting. A Member participating in a meeting by this means shall be deemed to be present in person at the meeting.

ARTICLE III

Directors

Section 3.1 Number: Qualifications. The number of Directors shall not be less than five (5) nor more than fifteen (15), exclusive of *ex officio*, designated, appointed and non-voting Directors. All Directors, other than those either serving *ex officio* (appointed by the Chair of the Board of Trustees of Florida Atlantic University and the President of Florida Atlantic University or his or her designees), shall have a term of three (3) years and/or until a successor

Director is elected by the Members and has qualified, unless prior thereto they shall die, resign or be removed from office. A Director may succeed himself. Directors, other than those serving *ex officio*, designated or appointed, may be removed from office at any time, with or without cause, by a vote of a majority of the votes which at any time are authorized to be cast by all of the Members. Directors serving *ex officio* or by appointment from Florida Atlantic University may be removed from office at any time in accordance with the policies and regulations of Florida Atlantic University. In addition to the voting Directors, the Members may, in their sole discretion, elect any number of non-voting Directors. The non-voting Directors shall receive all notices of meetings, but shall not have the right to vote on any matters.

Section 3.2 General Powers of Directors. The Board of Directors shall have the duty of oversight of the management of the Corporation and the establishment of policy for the Corporation and, subject to the restrictions imposed by law, by the Amended and Restated Articles of Incorporation, or by these Bylaws, may exercise all the powers of the Corporation.

Section 3.3 Election and Removal of Officers. The Directors shall elect all Officers of the Corporation. Any officer may be removed at any time by a majority vote of the Board of Directors, with or without cause, and in its absolute and uncontrolled discretion.

Section 3.4 Voting. Directors shall vote at meetings, in person and not by proxy. Each Director, other than non-voting Directors, shall be entitled to one vote. The act of the majority of the votes which at any time are authorized to be cast by all the Directors of the Corporation shall be the act of the Directors.

Section 3.5 Regular Meetings. There shall be regular meetings of the Board of Directors for the transaction of business. Such meetings shall be called by the Secretary or Assistant Secretary upon the request of the Chairperson of the Board and may be held any time

and at any place within or without the State of Florida. The Directors shall be provided with at least fifteen (15) days notice, either personally or by mail before each regular meeting. Notice of the meetings need not be given to any Director who signs a waiver of notice, whether before or after the meeting. The minutes of such meetings shall be promptly recorded, and such records shall be open to public inspection.

Section 3.6 Special Meetings: Call and Notice. Special Meetings of the Board of Directors for any purposes may be called by the Secretary or any Assistant Secretary upon the request of the Chairperson of the Board with at least fifteen (15) days notice, either personally or by mail stating the place and time of the meeting. All agenda items of the meeting must be cleared by the Chairperson of the Board prior to the meeting. Notice of the meetings need not be given to any Director who signs a waiver of notice, whether before or after the meeting.

Section 3.7 Electronic Meetings. Any or all Directors may participate in a meeting of the Directors by, or conduct a meeting through the use of, any means of communication by which all Directors participating may hear each other simultaneously during the meeting. A Director participating in a meeting by this means shall be deemed to be present in person at the meeting.

Section 3.8 Resignation. Any Director may resign at any time. Such resignation may be in writing, and shall take effect upon the receipt thereof by the Chairperson of the Board or Secretary of the Corporation. The acceptance of a resignation shall not be necessary to make it effective.

Section 3.9 Filling of Vacancies. If a Director dies, resigns or is removed, or if there is an increase in the authorized number of Directors by the Members, any qualified person

to fill such vacancy or newly created office shall be elected by the Members of the Corporation, except in the case of those Directors serving *ex officio*, designated or appointed.

Section 3.10 Manner of Acting. A majority of the voting members of the Board of Directors in office at the time of any meeting of the Directors shall constitute a quorum for the transaction of business at such meeting, and, except as otherwise provided by statute or by the Amended and Restated Articles of Incorporation or by these Bylaws, the act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. In the absence of a quorum, a majority of the Directors present may adjourn any meeting from time to time until a quorum is present.

Section 3.11 Committees. In addition to such other committees as the Board of Directors may from time to time authorize or elect, there shall be the following committees:

a. Finance/Investment Committee. The Finance/Investment Committee shall consist of not less than three nor more than seven persons who shall be elected by the Directors at its annual meeting. Members of the Finance/Investment Committee will hold office for a period of one year and until their successors are appointed. The members of the committee shall elect one of its members to serve as chairperson of the committee.

At each regular meeting of the Board of Directors, the Chairperson of the Finance/Investment Committee shall report on the activities of the Committee since the last regular meeting of the Board and on the future plans of the Committee.

b. Audit Committee. The Audit Committee shall consist of not less than three nor more than seven persons, all but one of whom shall be elected by the Directors at its annual meeting. The remaining Member shall be a Member either designated by the Chair of the Board of Trustees of Florida Atlantic University or the President of Florida Atlantic University.

Members of the Audit Committee will hold office for a period of one year and until their successors are appointed. The members of the Audit Committee shall elect one of its members to serve as chairperson of the committee.

The Audit Committee shall annually meet with the Corporation's auditors and shall be responsible for assuring the Corporation's books are annually audited by a Certified Public Accountant in accordance with rules and regulations adopted by the Auditor General pursuant to Florida Statutes Section 11.45(a) and by the Florida Atlantic University Board of Trustees. Annual audit reports shall be submitted, within nine (9) months after the end of the Corporation's fiscal year, to the Board of Directors, to the Board of Trustees of Florida Atlantic University, to the Auditor General, and the Board of Governors of the State University System, for review.

c. Miscellaneous. Meetings of any committee shall be called by the Secretary of the Corporation, from time to time, at the direction and upon the request of the Chairperson of the committee or any two members of such committee. Notice of such meetings shall in each instance be given to each member of the committee at his last known business address, at least one day before the meeting, either orally or in writing, delivered personally or by mail, telegraph, telex or telephone.

Notice of any meeting need not be given to any member of a committee who signs a waiver of notice before or after the meeting. The attendance of any member of a committee at a meeting without protesting at the commencement of the meeting the lack of notice of the meeting shall constitute a waiver of notice of that member.

The Chairperson of the Board may fill any vacancy in any committee, other than a vacancy in a seat held by a committee member serving *ex officio* or designated until the next meeting of the Members.

The designations of any committee and the delegation thereto of any authority shall not operate to relieve the Board, or any member thereof, of any responsibility imposed by law.

Section 3.12 Compliance with Laws. All meetings and special meetings of the Directors, the Board of Directors, and all committees of the Board of Directors shall be held in accordance with the requirements of the Florida Open Meetings Act (Florida Statutes, Section 286.011), to the extent that any such meetings are subject to the Florida Open Meetings Act under law.

ARTICLE IV

Officers

Section 4.1 Executive Officers. The Officers of the Corporation shall be a Chairperson of the Board of Directors, a Vice Chairperson of the Board of Directors, a President, one or more Vice Presidents, a Treasurer, a Secretary, one or more Assistant Secretaries and such other officers as the Board of Directors shall deem necessary, who shall have such authority and perform such duties as prescribed by these Bylaws, or by Resolutions of the Board of Directors.

Section 4.2 Multiple Offices. One person may hold more than one office.

Section 4.3 Chairperson. The Chairperson of the Board of Directors shall, when present, preside at all meetings of the Members and the Board of Directors. The Chairperson may call meetings of the Members and the Board of Directors and of any Committee of the Board whenever the Chairperson deems it necessary. The Chairperson may

appoint special committees of the Board of Directors and prescribe the scope of their duties and authority. The Chairperson shall have such other powers and duties as may from time to time be prescribed by the Bylaws or Resolution of the Members. In the absence or incapacity of the Chairperson of the Board of Directors, the Vice Chairperson of the Board of Directors shall serve as acting Chairperson of the Board. This interim position shall last until such time as the Chairperson resumes his or her duties and positions or his or her successor is elected at a meeting of the Directors.

Section 4.4 Vice Chairperson. The Vice Chairperson shall be vested with all the powers and shall perform all the duties of the Chairperson in the absence of or disability of the Chairperson unless or until the Board of Directors shall otherwise determine. The Vice Chairperson shall have such other powers and perform such other duties as shall be prescribed by the Directors.

Section 4.5 President. The President is the Chief Executive Officer of the Corporation and shall, when the Board is not in session, be responsible for managing the affairs of the Corporation and compliance with the Bylaws and Resolutions and directions of the Directors, subject only to the control and direction of the Board. The President shall be selected and approved by the Board, with the prior consultation of the President of Florida Atlantic University.

In the absence or incapacity of the President, the Chairperson of the Board shall appoint an acting President to serve until a successor President is elected at a meeting of the Directors.

Section 4.6 Vice President. The Vice President or Vice Presidents shall be vested with all the powers and shall perform all the duties of the President in the absence of or

disability of the latter unless or until the Directors shall otherwise determine. The Vice President or Vice Presidents shall have such other powers and perform such other duties as shall be prescribed by the Directors.

Section 4.7 Secretary. The Secretary shall give or cause to be given, notice of all meetings of Members and Directors, and all other notices, as required by law or by these Bylaws. the Secretary shall record the proceedings of the meetings of the Members and of the Board of Directors in a book to be kept for that purpose, and in accordance with Florida Statutes, Section 286.011, and shall maintain the records of the Corporation. As stated in Florida Statutes, Section 1004.28, Corporation records are confidential and exempt from examination under the Florida Public Records Act, Florida Statutes, Section 119.07. Upon receipt of a reasonable and specific request in writing, the Corporation will provide financial information, such as expenditures from Corporation funds, documentation regarding completed business transactions, and information about the investment and management of Corporation assets. The Corporation will furnish this information in a format reasonably responsive to the request at a reasonable cost to the requesting party. The Corporation will not, however, release any record or information that includes personal financial information about the donor, prospective donor, volunteer or employee. All fundraising activities in support of the Corporation undertaken by Florida Atlantic University staff, faculty, or students, or by volunteers, are undertaken on behalf of the Corporation. All documents associated with such activities in possession of any University staff, faculty, student, or any volunteer are a record of the Corporation that is confidential. The Secretary shall perform such other duties as may be assigned to the Secretary by the Board of Directors or the Chairman of the Board. The Secretary shall have the custody of the seal of the

Corporation and shall affix the same to all instruments requiring it when authorized by the Board of Directors or the Chairman of the Board, and shall attest the same.

Section 4.8 Assistant Secretary. The Members may elect an Assistant Secretary or more than one Assistant Secretaries. Each Assistant Secretary shall have such powers and perform such duties as may be assigned to him or her by the Board of Directors or the Chairperson of the Board.

Section 4.9 Treasurer. The Treasurer shall have custody of all funds, securities, evidences of indebtedness and other valuable documents of the Corporation; the Treasurer shall receive and give or cause to be given receipts for monies paid in on account of the Corporation and shall pay out of the funds on hand all just debts of the Corporation of whatever nature upon maturity of the same; the Treasurer shall enter or cause to be entered in books of the Corporation to be kept for that purpose full and accurate accounts of all monies received and paid out on account of the Corporation, and, whenever required by the Chairperson of the Board or the Board of Directors shall render a statement of the Treasurer's cash accounts; the Treasurer shall keep or cause to be kept such other books as will show a true record of the expenses, losses, gains, assets and liabilities of the Corporation; and the Treasurer shall perform all of the other duties incident to the office of Treasurer. The Treasurer shall establish an integrated plan to monitor operations, report performance against approved operating plans and standards, and communicate the results of operations to appropriate levels of management and the Audit Committee, provided that the communication of such results to management and the Audit Committee shall be at the same time. The Treasurer will also be responsible for compliance with all governmental reporting and supervise all matters relating to taxes, and provide protection for the assets of the Corporation.

Section 4.10 Assistant Treasurer. The Board of Directors may elect an Assistant Treasurer or more than one Assistant Treasurer. Each Assistant Treasurer shall have such powers and shall perform such duties as may be assigned to him or her by the Board of Directors or the Chairperson of the Board.

ARTICLE V

Contracts, Checks, Drafts, etc.

Section 5.1 Contracts, etc. The Board of Directors may authorize any officer or officers or agent or agents of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances. When the Board of Directors are not in session, the Chairperson of the Board may authorize any officer or officers or agent or agents of the Corporation to enter into any contract or execute and deliver any instrument in the name of and behalf of the Corporation and such authority may be general or confined to specific instances.

Section 5.2 Checks, Drafts, etc. All checks, drafts or other orders for the payment of money issued in the name of the Corporation shall be signed by such person or persons and in such manner as shall, from time to time, be determined by the Board of Directors.

ARTICLE VI

Dissolution

Upon the dissolution of the Corporation in the manner provided by law, the Board of Directors shall, after all the debts of the Corporation have been fully satisfied, distribute all the remaining assets of the Corporation in accordance with the provisions of Article IX of the Amended and Restated Articles of Incorporation of the Corporation.

ARTICLE VII

Amendments

These Bylaws, or any of them, may be altered, amended or repealed, or new Bylaws may be made at any Annual or Special Meeting, by a vote of the majority of the votes which at any time are authorized to be cast by all of the Members of the Corporation; provided, however, that no amendment, alteration or repeal of any of these Bylaws nor any amendment of the Amended and Restated Articles of Incorporation of the Corporation in the manner provided by law, shall alter the purpose of the Corporation to operate exclusively to receive, hold, invest and administer property and to make expenditures to or for the benefit of Florida Atlantic University, a state university in Florida, and Harbor Branch Oceanographic Institute at Florida Atlantic University, so far as is or may be permitted by the laws of the State of Florida in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and as more fully set forth in the Amended and Restated Articles of Incorporation of the Corporation.

ARTICLE VIII

Miscellaneous Provisions

Section 8.1 Fiscal Year. The calendar year shall be the fiscal year of the Corporation.

Section 8.2 Seal. The seal of the Corporation shall be circular, with the name of the Corporation around the border and the year and state of incorporation in the center.

Section 8.3 Principal Office. The principal office of the Corporation shall be in St. Lucie County, Florida, but the Directors may also from time to time designate other offices of the Corporation within or without the State of Florida.

Section 8.4 Change of Registered Office or Registered Agent. When the registered office is changed, or when the registered agent is changed, or dies, resigns or becomes disqualified, the corporation shall, by resolution of the Board of Directors, forthwith fix the address of the new registered office or designate the successor registered agent or both, as the case may be.

Section 8.5. Corporation Employees. The Corporation may employ staff as required, but such employees shall not be considered to be employees of the State of Florida by virtue of their employment by the Corporation. Subject to the approval of the Chairperson of the Board of Directors and the President of Florida Atlantic University, University employees performing duties for the Corporation may receive additional compensation from the Corporation.

ARTICLE IX

Indemnification

Section 9.1 Right to Indemnification. Each person (including here and hereinafter, the heirs, executors, administrators, or estate of such person) (1) who is or was a Director, Member, or officer of the Corporation, (2) who is or was an agent or employee of the Corporation and as to whom the Corporation has agreed to grant such indemnity hereunder, or (3) who is or was serving at the request of the Corporation as its representative in the position of a director, officer, trustee, or partner of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified by the Corporation as of right to the fullest extent permitted or authorized by current or future legislation or by current or future judicial or administrative decision (but, in the case of any future legislation or decision, only to the extent that it permits the Corporation to provide broader indemnification rights than permitted prior to

the legislation or decision), against all judgments, fines, liabilities, settlements, losses, damages, costs and expenses, including attorneys' fees, asserted against him or her or incurred by him or her in his or her capacity as such director, officer, trustee, partner, agent, employee or representative, or arising out of his or her status as such director, officer, trustee, partner, agent, employee or representative. The foregoing right of indemnification shall not be exclusive of other rights to which those seeking indemnification may be entitled. The Corporation may maintain insurance, at its expense, to protect itself and any such person against any such fine, liability, cost or expense, including attorney's fees, whether or not the Corporation would have the legal power to directly indemnify him against such liability. Any determination with respect to indemnification under this Article shall be made by the Board of Directors.

Section 9.2 Advances. Costs, charges and expenses (including attorneys' fees) incurred by a person referred to in Section 9.1 in defending a civil or criminal suit, action or proceeding may be paid (and, in the case of Members, Directors or Officers of the Corporation, shall be paid) by the Corporation in advance of the final disposition thereof upon receipt of an undertaking to repay all amounts advanced if it is ultimately determined that the person is not entitled to be indemnified by the Corporation as authorized by this Article, and upon satisfaction of other conditions established from time to time by the Board of Directors or required by current or future legislation (but, with respect to future legislation, only to the extent that it provides conditions less burdensome than those previously provided).

Section 9.3 Savings Clause. If this Article or any portion of it is invalidated on any ground by a court of competent jurisdiction, the Corporation nevertheless indemnifies each Member, Director or Officer of the Corporation to the fullest extent permitted by all portions of this Article that has not been invalidated and to the fullest extent permitted by law.

Section 9.4 Effective Date. The provisions of this Article shall be applicable to claims, actions, suits or proceedings made or commenced after the adoption hereof, whether arising from acts or omissions to act occurring before or after the adoption hereof.

Adopted by the Members and Directors of the Corporation as of December 31, 2007.

By: _____
Name: William J. Stewart
Title: Secretary

State of Florida

Department of State

I certify the attached is a true and correct copy of the Amended and Restated Articles of Incorporation, filed on January 29, 2008, for HARBOR BRANCH OCEANOGRAPHIC INSTITUTION, INC. which changed its name to HARBOR BRANCH OCEANOGRAPHIC INSTITUTION FOUNDATION, INC., a corporation organized under the laws of the State of Florida, as shown by the records of this office.

The document number of this corporation is 734168.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Eleventh day of February, 2008

Kurt S. Browning
Secretary of State

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

AMENDED AND RESTATED

ARTICLES OF INCORPORATION

of

HARBOR BRANCH OCEANOGRAPHIC INSTITUTION, INC.

(A Florida Not-for-Profit Corporation)

The Articles of Incorporation of Harbor Branch Oceanographic Institution, Inc., as heretofore in effect, are hereby amended and restated to read as set forth below. These Amended and Restated Articles of Incorporation were duly adopted by the unanimous written consent of the members and the board of directors of the Corporation as of the 31st day of December, 2007.

ARTICLE I
NAME

The name of this corporation shall be Harbor Branch Oceanographic Institution Foundation, Inc. (hereinafter the "Corporation").

ARTICLE II
PRINCIPAL OFFICE AND/OR MAILING ADDRESS

The address of the principal office and/or the mailing address of the Corporation is 5600 US 1 North, Ft. Pierce, FL 34946.

ARTICLE III
PURPOSE

This Corporation is a non-profit corporation, organized for charitable and educational purposes as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and operated exclusively to receive, hold, invest and administer property and to make expenditures to or for the benefit of Florida Atlantic University, a state university in Florida, and Harbor Branch Oceanographic Institute at Florida Atlantic University, so far as is or may be permitted by the laws of the State of Florida and Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and to engage in all such activities as are necessary, useful, suitable, desirable or proper to carry out the purposes set forth herein.

ARTICLE IV
REGISTERED OFFICE AND AGENT

The street address of the registered office of the Corporation is 3355 Ocean Drive, Vero Beach, FL 32963; and the name of the Corporation's registered agent at that address is William J. Stewart. The registered office or the registered agent may be changed in the manner set forth in the Bylaws of the Corporation.

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The undersigned, being familiar with the obligations imposed by law on registered agents, hereby agrees to accept the appointment by the Corporation to serve as its registered agent, at the registered office designated above.

William J. Stewart

ARTICLE V
MEMBERSHIP

This Corporation shall have members (hereinafter referred to as "Members"). The Members of the Corporation shall consist of those individuals elected, appointed, or serving *ex officio* as Directors of the Corporation in accordance with these Articles of Incorporation and the Bylaws. The duties and powers of the Directors shall be as provided in the Bylaws of the Corporation and shall include, without limitation, the election of Directors, and the election of members of the committees of the Board of Directors. These powers shall be exercised in accordance with the Bylaws of the Corporation.

ARTICLE VI
BOARD OF DIRECTORS

The affairs of this Corporation shall be managed by a Board of Directors consisting of not less than five (5) Directors and not more than fifteen (15) Directors, exclusive of *ex officio*, designated, appointed and non-voting Directors. The number of Directors may be increased or decreased from time to time, in accordance with the Bylaws of the Corporation, but shall never be less than five. The Directors shall be elected by the Members in accordance with the provisions of the Bylaws. In addition to those Directors elected in accordance with the provisions of the Bylaws, the Chair of the Board of Trustees of Florida Atlantic University may appoint a representative to serve on the Board of Directors, and the President of Florida Atlantic University or his designee shall serve on the Board of Directors.

A Director shall not be personally liable to the Corporation for monetary damages for breach of fiduciary duty as a Director, except as provided by Florida law.

ARTICLE VII
AMENDMENT

Any amendment to these Articles of Incorporation or the Bylaws of the Corporation shall be proposed by and require the approval of a majority of the Members.

ARTICLE VIII
DURATION OF CORPORATION

The period of the duration of the Corporation is perpetual unless dissolved according to law.

ARTICLE IX
DISSOLUTION

Upon the dissolution or winding up of this Corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of the Corporation, shall be distributed to Florida Atlantic University, or if no longer in existence, then to a not-for-profit fund, foundation, or corporation which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or

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corresponding provisions of any subsequent federal tax laws or to any government entity, as determined by the Members.

ARTICLE X
LIMITATIONS

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its Directors, officers, Members or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of any of its purposes. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h) of Section 501 of the Internal Revenue Code of 1986, as amended), and the Corporation shall not participate or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office. The Corporation shall not give, either directly or indirectly, any gift to a political committee or committee of continuous existence as defined in Florida Statute Section 106.011 for any purpose other than those certified by a majority of roll call vote of the Board of Directors at a regularly-scheduled meeting as being directly related to the educational mission of Florida Atlantic University. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States Internal Revenue Law), or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States Internal Revenue Law).

ARTICLE XI
EFFECTIVE DATE

These Amended and Restated Articles of Incorporation shall be effective as of the 31st day of December 2007.

IN WITNESS WHEREOF, the undersigned has executed these Amended and Restated Articles of Incorporation on this 2nd day of January, 2008.

Paul A. Yost, Jr.
Chairman of the Board of Directors

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