

## DECEMBER MEETING, 2002

*The University of Michigan  
Ann Arbor  
Thursday, December 12, 2002*

The Regents convened at 2:40 p.m. in the Regents' Room. Present were President Coleman and Regents Brandon, Deitch, Horning, Maynard, McGowan, Newman, Taylor, and White. Also present were Provost Courant, Interim Executive Vice President Greenfield, Vice President and General Counsel Krislov, Chancellor Little, Chancellor Mestas, Vice President Rudgers, Interim Chief Financial Officer Slottow, Vice President and Secretary Tedesco, and Vice President Ulaby. Vice President Harper and Vice President Wilbanks were absent.

### **President's Opening Remarks**

President Coleman called the meeting to order. She noted that she had attended a performance of the opera, "Da Organizer," which had until its recent discovery by University of Michigan professor James Dapogny been thought lost to history. She cited a number of noteworthy faculty and student accomplishments, national recognition received by the University of Michigan Health System and other units, and large grants received by University units during the past month. She noted that the Life Sciences, Values and Society Program is collaborating with the Ann Arbor District Library, Ann Arbor News, and other businesses and community organizations on "Ann Arbor Reads," the city's first community reading project. The book to be read is *Abraham Lincoln's DNA and Other Adventures in Genetics*, by Philip Reilly, and the goal is to encourage the

entire Ann Arbor community to read one book that raises ethical issues posed by advances in the life sciences.

### **Resolution in Honor of Regent Horning**

President Coleman recognized Amey Horning, wife of Regent Daniel Horning.

She called on Regent Deitch, who read the following resolution:

#### ***Regents' Resolution***

*The Regents of the University of Michigan extend their appreciation and best regards to their colleague and friend Daniel D. Horning as he concludes eight years of dedicated service on the Board of Regents.*

*A 1982 graduate of the University of Michigan and a resident of Grand Haven, Regent Horning is an executive benefit- and estate-planning specialist and a partner in the Grand Haven Group of the Northwestern Mutual Financial Network. Well before he was elected to the Board of Regents in 1994, Regent Horning showed his devotion to the University in a number of ways, beginning with service as student manager of the football team as an undergraduate student. Later, he served as president of the University of Michigan Alumni Club of Grand Rapids, and he is a member of the University of Michigan "M" Club, the Victors Club, and the President's Club.*

*Throughout his eight years on the Board of Regents, Regent Horning has been a conscientious and persistent advocate for students, parents, and alumni and a voice for citizens of Michigan, especially those residing in the western part of the state. During his tenure, he played active roles in two presidential searches, including service as co-chair of the search that culminated in the selection of President Mary Sue Coleman.*

*The Regents salute Regent Horning for his generous service and ongoing loyalty and commitment to the University and acknowledge the equal dedication of his wife, Amey. With gratitude and esteem for his many contributions to an institution he cherishes, and with the expectation that he and his family will continue to be involved actively in University life, the Regents name Daniel D. Horning Regent Emeritus of the University of Michigan.*

Regent Deitch commented that of the 14 Regents he has worked with over the past 10 years, "none has been more devoted to Michigan than Dan." He noted that Regent Horning has always based his stances on issues on what was best for the University of Michigan. He thanked Regent Horning's wife, Amey, and daughters Jill and

Ashley, and noted that his father, Dr. David Horning, is also a prominent alumnus. He concluded that “you always made me, and all of us, laugh at least once, usually more, and we’ll all miss you.”

A round of applause followed.

Regent Horning responded that “it’s been a wonderful eight years,” and that his commitment from the outset was to try to make a University of Michigan degree more valuable for those who possess it and more meaningful for those who aspire to attain it. He noted that his decision not to seek another term on the Board was based on a desire to focus more on his family, and that he was looking forward to the next phase of his life.

A standing ovation followed.

## **Consent Agenda**

**Minutes.** Vice President Tedesco submitted for approval the minutes of the meeting of November 14, 2002.

**Reports.** Interim Chief Financial Officer Slottow submitted reports on investment and plant extension. Provost Courant submitted the Human Resources and Affirmative Action Report.

**Litigation Report.** Vice President Krislov submitted the Litigation Report. He commented that both of the University’s affirmative action admissions lawsuits have been accepted for consideration by the U.S. Supreme Court. He thanked the Regents for “supporting us in a way that not all Regents or trustees would do through a very difficult process because you believe in the principles that we stand for.” He noted that pursuing the lawsuit and appeals process has taken a lot of courage and dedication on the part of the Board, and he thanked them for this. President Coleman agreed, and noted that the

Regents' support is very important as the University pursues the final step in the judicial review process.

**Research Report.** Vice President Ulaby submitted the report of Projects Established, October 31 - November 24, 2002. He noted that the annual report on research would be presented at the January 2003 meeting.

**University of Michigan Health System.** Interim Executive Vice President Greenfield reported that smallpox injections would be given to the 251 "immediate responders" employed by the Health System who would have responsibilities in a bioterrorism incident. Dr. Greenfield responded to questions about the smallpox vaccine.

**Division of Student Affairs.** In Vice President Harper's absence, President Coleman complimented individuals from across the University involved in a six-year plan to improve life safety in the residence halls. This work has been coordinated with the state fire marshall's office. The first three of a series of projects to be undertaken over the next several years, aimed at substantially improving the residence hall fire safety and general security systems, are included in this month's action agenda. The entire project will cost about \$49 million over a period of 5-6 years.

**University of Michigan-Dearborn.** Chancellor Little reported on the accomplishments of faculty on the Dearborn campus and the importance of the University of Michigan to the larger southeastern Michigan area.

**University of Michigan-Flint.** Chancellor Mestas commented that a UM-Flint student production of "Master Harold and the Boys" has been selected for performance at the American College Theatre Festival in Indiana. At this event, six plays will be chosen for presentation next April at the Kennedy Center in Washington, D.C. He also pointed

out that five leaders of the current state legislature are active alumni of the University of Michigan-Flint.

**Michigan Student Assembly Report.** MSA President Sarah Boot reported on MSA activities and accomplishments during the past month. She noted that the bus transportation system to the airport for Thanksgiving vacation had been a huge success, and would be repeated for the winter break.

She introduced Mr. Dion Beatty who read a statement on behalf of the Michigan Student Assembly. The statement thanked Regent Brandon for arranging to have Domino's Pizza sponsor a tailgate organized by MSA earlier in the semester, thereby contributing to the overwhelming success of the event.

**Voluntary Support.** The report of voluntary support for November 2002 was submitted.

Regent Maynard thanked Vice President Wilbanks for having done "a tremendous job, not just for the University of Michigan, but also for higher education in general." Regents White and Newman associated themselves with this comment.

**Personnel Actions/Personnel Reports.** Provost Courant submitted a number of personnel actions and personnel reports. He called attention to the reappointment of Dr. William Kotowicz as dean of the School of Dentistry through August 2003 or until such time as a new dean assumes the position, whichever is first.

**Retirement Memoirs.** Vice President Tedesco submitted memoirs for nine retiring faculty members.

**Memorials.** No deaths of active faculty members were reported to the Regents this month.

**Degrees.** There are no actions with respect to degrees this month.

**Approval of Consent Agenda.** On a motion by Regent Horning, seconded by Regent Brandon, the Regents unanimously approved the Consent Agenda.

### **Sale of Gifted Real Estate**

Interim Chief Financial Officer Slottow informed the Regents about the sale of real estate property located at 35 Flying Point, Branford, Connecticut. The net proceeds from the sale will benefit the School of Music.

### **State Building Authority Financing of Fairlane Training and Development Center**

Interim Chief Financial Officer Slottow called attention to the separately distributed attachment to the action request, consisting of a resolution regarding state financing for the acquisition of the Fairlane Training and Development Center (“FTDC”) by the University of Michigan-Dearborn. He noted that recent prior Regents’ actions had enabled the University to ensure that all projects related to acquisition of this facility would be consistent with the FY 2002 State Capital Outlay Bill. He further reported that since the last meeting, both houses of the state legislature had approved the project. Approval of the resolution will allow the University to execute documents necessary for the state to finance 75% of the purchase and renovation of the Fairlane Training and Development Center.

Regent Brandon moved approval of the following resolution, authorizing the appropriate University officers to: 1) on or prior to the SBA’s issuance of commercial paper notes, execute the Construction and Completion Assurance Agreement and Bill of Sale for the project; 2) at or near completion of the project and prior to the issuance of the SBA’s bonds, execute the Lease, convey title to the property, and execute any necessary

easement agreements; and 3) execute any other documentation required for the financing of the project by the SBA. Regent Horning seconded the motion, and it was approved, with Regents Brandon, Horning, Maynard, McGowan, Newman, Taylor, and White in favor. Regent Deitch recused himself from voting due to a conflict of interest.

**RESOLUTION OF THE REGENTS OF THE UNIVERSITY OF MICHIGAN  
APPROVING A COMPLETION ASSURANCE AGREEMENT, A CONVEYANCE OF  
PROPERTY, A LEASE AND ADDITIONAL AGREEMENTS, IF NECESSARY, FOR  
THE UNIVERSITY OF MICHIGAN-DEARBORN HUBBARD DRIVE PROFESSIONAL  
BUILDING AND EDUCATION BUILDING ACQUISITION (PHASE 1)**

A RESOLUTION of the Regents of the University of Michigan (i) approving (a) a form of completion assurance agreement (the "Completion Assurance Agreement"), by and among the State Building Authority (the "Authority"), the State of Michigan (the "State") and the Regents of the University of Michigan, a Michigan constitutional body corporate (the "Educational Institution"), providing for the rights, duties and obligations of the Authority, the State and the Educational Institution with respect to the Educational Institution's Dearborn Hubbard Drive Professional Training and Education Building Acquisition (Phase I), also known as the Fairlane Training and Development Center, and the site therefor (the "Facility") during the acquisition, renovation and/or equipping of the Facility and prior to the conveyance of the Facility to the Authority, (b) the conveyance of the Facility to the Authority, (c) a lease (the "Lease"), by and among the Authority, the Educational Institution and the State, for the purpose of leasing the Facility to the State and the Educational Institution and (d) a condominium association agreement, a common use agreement, an easement and/or other agreement (the "Additional Agreements") between the Authority and the Educational Institution, if necessary and/or desirable in connection with access, parking, utilities, pedestrians, encroachments, common use and/or other matters pertaining to the interactions between the Facility and real property owned by the Educational Institution, and (ii) providing for other matters related thereto.

WHEREAS, the Authority has been incorporated under and pursuant to the provisions of Act No. 183, Public Acts of Michigan, 1964, as amended ("Act 183"), for the purpose of acquiring, constructing, furnishing, equipping, owning, improving, enlarging, operating, mortgaging and maintaining buildings, necessary parking structures or lots and facilities, and sites therefor, for the use of the State, including institutions of higher education created pursuant to Section 4, 5, 6 or 7 of Article 8 of the Michigan Constitution of 1963 (the "State Constitution"), or any of its agencies; and

WHEREAS, the Educational Institution has been maintained and created pursuant to Sections 4 and 5 of Article 8 of the State Constitution; and

WHEREAS, the State and the Educational Institution desire that the Authority finance the acquisition, renovation and/or equipping of the Facility in consideration of (i) the Educational Institution granting a license to the Authority to enter upon the site of the Facility (the "Site") in order to undertake such acquisition, renovation and/or equipping, (ii) the Educational Institution undertaking on behalf of the Authority the oversight of such acquisition, renovation and/or equipping and (iii) the Educational Institution conveying the Facility to the Authority on or prior to the date of its completion, and the Authority is willing to provide such financing in consideration of the items described above; and

WHEREAS, in accordance with the Completion Assurance Agreement, the State and the Educational Institution desire that the Authority acquire the Facility on or prior to the date of its completion, and lease the same to the State and the Educational Institution, and the Authority is willing to acquire the Facility and lease the same to the State and the Educational Institution; and

WHEREAS, the Facility will be acquired and renovated by the Educational Institution on behalf of the Authority, and it is intended that the Facility be conveyed to the Authority by the Educational Institution; and

WHEREAS, the acquisition of the Facility by the Authority for use by and lease to the Educational Institution and the State is necessary in order for the State and the Educational Institution to carry out necessary governmental functions and to provide necessary services to the people of the State as mandated or permitted by constitution and law, and the use of Act 183 to accomplish such acquisition represents the most practical means to that end at the lowest cost to the State and the Educational Institution; and

WHEREAS, Section 7 of Act 183 provides that the Lease shall be approved by the Authority, by the State Administrative Board of the State and by concurrent resolution of the Legislature of the State concurred in by a majority of the members elected to and serving in each house and if the Lease is for an institution of higher education existing or created pursuant to Section 4, 5, 6 or 7 of Article 8 of the State Constitution, then in addition, the Lease shall be authorized by the institution of higher education and signed by its authorized officer and, accordingly, it is necessary that the Educational Institution authorize and approve the Lease; and

WHEREAS, if it is determined that (i) the Authority will require an easement from a public road to the Facility over real property owned by the Educational Institution so that the Authority has access to the Facility, (ii) the Educational Institution will require for future use certain easements through the Facility, (iii) the Authority and the Educational Institution will require an agreement to share a common structural wall, (iv) the Authority will require an easement over real property owned by the Educational Institution so that the Authority has sufficient parking available in connection with the reasonable use of the Facility, and/or (v) the Authority and/or the Educational Institution will require other easements and/or agreements pertaining to the Facility and/or real property owned by the Educational Institution (such as, but without limitation, condominium association agreements, common use agreements, easements and/or agreements pertaining to pedestrian traffic, utility lines, and/or encroachments), then in order to meet any such requirement, it may be necessary for an authorized officer of the Educational Institution to approve Additional Agreements to provide for such easements and/or agreements;

NOW, THEREFORE, BE IT RESOLVED BY THE REGENTS OF THE UNIVERSITY OF MICHIGAN THAT:

1. The Educational Institution hereby authorizes and approves the Completion Assurance Agreement in substantially the form attached as Exhibit A, and the Chief Financial Officer of the Educational Institution is hereby authorized and directed to execute and deliver, at the appropriate time, the Completion Assurance Agreement in substantially the form attached as Exhibit A for and on behalf of the Educational Institution. Such officer is hereby authorized to approve such changes in and modifications to the Completion Assurance Agreement as do not materially adversely affect the Educational Institution.

2. The conveyance of the Facility to the Authority in accordance with the Completion Assurance Agreement is hereby approved, and the then seated President and the Chief Financial Officer of the Educational Institution are hereby authorized and directed to execute and deliver a warranty deed in substantially the form attached as Exhibit B and bills of sale to accomplish such conveyance in such form as may be from

time to time approved by such officers. Such officer is hereby authorized to approve such changes in and modifications to the warranty deed as do not materially adversely affect the Educational Institution.

3. The Educational Institution hereby authorizes and approves the Lease in substantially the form attached as Exhibit C, and the Chief Financial Officer of the Educational Institution is hereby authorized and directed to execute and deliver the Lease in accordance with the Completion Assurance Agreement and in substantially the form attached as Exhibit C for and on behalf of the Educational Institution and such officer is hereby designated as an authorized officer of the Educational Institution for purposes of Section 7 of Act 183. Such officer is hereby authorized to approve such changes in and modifications to the Lease as do not materially alter the substance and intent thereof as expressed in the Lease and the request for action submitted to the Regents in connection therewith; provided such officer is not hereby authorized to approve a change in the Lease with respect to the range of rental or the material financial obligations of the Educational Institution contained in the Lease approved herein. The Educational Institution hereby determines that the maximum rental in the amount described below is reasonable and the authorized officer is hereby authorized to approve in the Lease, as executed, rental in annual amounts determined by the final appraisal of "True Rental," but not exceeding \$2,440,000 in any 12-month period and a lease term of not exceeding 40 years.

4. If in connection with the entering into of the Lease, and if the Chief Financial Officer of the Educational Institution determines that (i) the Authority will require an easement from a public road to the Facility over real property owned by the Educational Institution so that the Authority has access to the Facility, (ii) the Educational Institution will require for future use certain easements through the Facility, (iii) the Authority and the Educational Institution will require an agreement to share a common structural wall, (iv) the Authority will require an easement over real property owned by the Educational Institution so that the Authority has sufficient parking available in connection with the reasonable use of the Facility, and/or (v) the Authority and/or the Educational Institution will require other easements and/or agreements pertaining to the Facility and/or real property owned by the Educational Institution (such as, but without limitation, condominium association agreements, common use agreements, easements and/or agreements pertaining to pedestrian traffic, utility lines, and/or encroachments), then such officer is hereby authorized and directed to execute and deliver Additional Agreements if necessary in order to meet any such requirement.

5. The Chief Financial Officer and other appropriate officers of the Educational Institution are each hereby authorized and directed to take or cause to be taken all other actions, including, without limitation, making requests of and approving requests from the Authority and the State and signing certificates, documents or other instruments, on behalf of the Educational Institution, as each deems necessary or desirable under the circumstances to accomplish the purposes of the transactions authorized in this Resolution.

6. The Educational Institution further confirms its obligations to perform the duties and obligations specified in the Completion Assurance Agreement (only upon its execution by the authorized officer of the Educational Institution) and the Lease (only upon its execution by the authorized officer of the Educational Institution) and acknowledges that such obligations do not depend upon passage of title to the Facility to the Educational Institution without consideration upon termination of the Lease. The Educational Institution hereby recognizes that it would execute and deliver the Lease even if title to the Facility would not pass upon termination of the Lease.

7. The Educational Institution recognizes that the Authority shall pay for costs of the Facility in an amount not in excess of \$24,599,800.

8. All ordinances, resolutions and orders or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

9. This Resolution shall be effective immediately upon its adoption.

### **Fairlane Training and Development Center**

Interim Chief Financial Officer Slottow described the Ford Training and Development Center (FTDC) property. He noted that the planned purchase would be subject to due diligence that would be pursued prior to the execution of any purchase agreements. The purchase price is \$31.7 million, plus \$1.1 million in renovation expenses. The property consists of two units; the University is purchasing Unit 2.

Regent Newman recognized the contributions of Mr. Edward Bagale, vice president for government relations at the University of Michigan-Dearborn, for his efforts on behalf of this project.

Regent Brandon moved that the University purchase the property at 1700 Hubbard Drive, Dearborn, Michigan at the negotiated price of \$31,700,000 and accept the gift of condominium Unit 1, recognizing that the purchase and gift are subject to the University completing necessary and appropriate due diligence, including satisfying itself of the environmental condition of the site and title work on the property. He further moved approval of the FTDC renovation project as described for \$1,100,000, and authorized issuing the project for bids and awarding construction contracts providing that bids are within the approved budget. Regent White seconded the motion, and it was approved, with Regents Brandon, Horning, Maynard, McGowan, Newman, Taylor, and White in favor. Regent Deitch recused himself from voting due to a conflict of interest.

### **Alternative Asset Commitment**

On a motion by Regent Newman, seconded by Regent Deitch, the Regents unanimously approved the additional commitment of \$1.0 million from the Long Term Portfolio to Natural Gas Partners VI, L.P.

### **South Quadrangle Fire Suppression and Fire Detection Alarm System Upgrade**

On a motion by Regent Brandon, seconded by Regent Maynard, the Regents unanimously approved the South Quadrangle Fire Suppression and Fire Detection Alarm System Upgrade Project as described, and authorized issuing the project for bids and awarding construction contracts providing that bids are within the approved budget.

### **Stockwell Hall Fire Detection Alarm System Upgrade**

On a motion by Regent White, seconded by Regent Maynard, the Regents unanimously approved the Stockwell Hall Fire Detection Alarm System Upgrade Project as described, and authorized issuing the project for bids and awarding construction contracts providing that bids are within the approved budget.

### **Vera Baits II Fire Detection Alarm System Upgrade**

On a motion by Regent White, seconded by Regent Horning, the Regents unanimously approved the Vera Baits II Fire Detection Alarm System Upgrade project as described, and authorized issuing the project for bids and awarding construction contracts providing that bids are within the approved budget.

### **Athletic Department - Football Stadium Artificial Surface**

On a motion by Regent Brandon, seconded by Regent White, the Regents unanimously approved the Athletic Department - Football Stadium Artificial Surface Project as

described, and authorized issuing the project for bids and awarding construction contracts providing that bids are within the approved budget.

**University of Michigan Hospitals and Health Centers (UMHHC) Medical Procedures Unit Equipment Replacement Project**

On a motion by Regent Maynard, seconded by Regent White, the Regents unanimously approved the University of Michigan Hospitals and Health Centers (UMHHC) Medical Procedures Unit Equipment Replacement Project as described, and authorized issuing the project for bids and awarding construction contracts providing that bids are within the approved budget.

**Proposed Reassignment Agreement between the University of Michigan and Shunmugham R. Pandian**

On a motion by Regent Brandon, seconded by Regent Horning, the Regents unanimously approved a reassignment agreement between the University of Michigan and Shunmugham R. Pandian. Because Dr. Pandian is also a University of Michigan employee, this agreement falls under the State of Michigan Conflict of Interest Statute. The following information is provided in compliance with statutory requirements:

1. Parties to the agreement are the Regents of the University of Michigan and Shunmugham Pandian.
2. Reassignment terms include that the inventor will be responsible for paying all expenses to protect and market the invention; the inventor will provide an annual report of all activities related to the program; the University will maintain a royalty free license to use the program for research and academic purposes; and the University will obtain a 15% share of any income received by the inventor.
3. The pecuniary interest of Dr. Pandian arises from his ownership of the technology.

**Option Agreement between the University of Michigan and SensiGen, Inc.**

On a motion by Regent Brandon, seconded by Regent Maynard, the Regents unanimously approved an option agreement with SensiGen for the invention “Early

Detection of Hypertension by Non-Invasive RT-PCR of Urine Sediment Cells” and U.S. Patent Application Ser. No. 10/108,969 (“INVENTIONS”). “OPTIONED APPLICATIONS” means the uses of the INVENTIONS within the field of clinical diagnostics and all related fields.

Because Dr. David Kurnit is a University of Michigan employee and also is the principal owner of SensiGen, Inc., this agreement falls under the State of Michigan Conflict of Interest Statute. The following information is provided in compliance with statutory requirements:

1. Parties to the agreement are the Regents of the University of Michigan (“MICHIGAN”) and SensiGen, Inc. (“COMPANY”).
2. Option terms include:

MICHIGAN grants COMPANY an exclusive option to obtain an exclusive license to the OPTIONED APPLICATIONS. The following terms shall apply to the option:

Option period: This exclusive option shall extend for a period of twenty-four (24) months from the Effective Date of this Agreement. Until the end of this option period, MICHIGAN shall not offer these license rights to any third party.

Limited License: During the Option Period, MICHIGAN grants COMPANY the license to make, have made, or use the OPTIONED APPLICATIONS solely for Evaluation Purposes. This limited license does not include the right to grant any sublicenses or to provide OPTIONED APPLICATIONS or their resulting Products or Processes to any third party.

Exercise of option: COMPANY may exercise its option by providing a written statement, reasonably satisfactory to MICHIGAN, of COMPANY’S intention and ability to develop LICENSED PRODUCTS or LICENSED PROCESSES covered by the OPTIONED APPLICATIONS for public use as soon as practicable, consistent with sound and reasonable business practices and judgment.

License negotiation: After COMPANY exercises its option and for a reasonable period of up to two (2) months after exercise, the parties agree to negotiate in good faith a license agreement granting COMPANY exclusive rights to make, have made, use and sell LICENSED PRODUCTS and LICENSED PROCESSES in the area of the OPTIONED APPLICATIONS under terms customary in the trade, such terms to include, but not be limited to, the following:

- (i) reservation for MICHIGAN to practice OPTIONED APPLICATIONS for educational and research purposes and to the federal government if required

under any prior funding agreement

(ii) royalty payments as follows:

- a running royalty of 2% of NET SALES from the sale of the first 500,000 units of LICENSED PRODUCTS or LICENSED PROCESSES;

- a royalty equal to 3% of NET SALES from the sale of the next 500,000 units of LICENSED PRODUCTS and LICENSED PROCESSES; and

- a royalty equal to 4% of NET SALES from the sale of all units of LICENSED PRODUCTS and LICENSED PROCESSES in excess of 1,000,000 units;

- the foregoing royalties will be payable on mutually agreed payment terms including milestone payments against future sales when defined levels of unit sales are attained;

- for purposes of this clause (ii), where LICENSED PRODUCTS and LICENSED PROCESSES are sold together as a unit, each such combination shall be considered a single unit;

(iii) minimum royalty payments of \$10,000 per year during each year of the license agreement payable at least \$2,500 quarterly;

(iv) reimbursement of patent costs by COMPANY to MICHIGAN including payment of all reasonable expenses incurred during the term of this Agreement for preparing, filing, prosecuting, and maintaining PATENT RIGHTS, in connection with U.S. Patent Application No. 10/108,969 (including all continuations, continuations in part and divisionals), and in connection with any future patent applications, and control of patent prosecution by MICHIGAN with reasonable rights of direction and consent by COMPANY;

(v) appropriate diligence terms;

(vi) a right in LICENSEE to enter into alliance, sublicense and other agreements providing rights to third parties to develop, market, manufacture, produce, process, sell or otherwise commercially exploit all or a part of the LICENSED APPLICATIONS, LICENSED PRODUCTS and LICENSED PROCESSES;

(vii) an obligation to issue to MICHIGAN shares of COMPANY stock equal to five (5%) percent of the total outstanding shares at such time, and conditioned on the Company securing at least \$1 million of equity and debt capitalization (for purposes of this clause debt used to acquire capital equipment shall be included in capitalization); and

(viii) minimum royalty payments.

Termination: Period unless the option is exercised, in which case this Agreement will terminate at the end of the stipulated negotiation period or upon execution of a license agreement, whichever occurs first.

No use of University services or facilities, nor any assignment of University employees is obligated under the agreement.

3. The pecuniary interest of Dr. Kurnit arises from his ownership in the parent company, SensiGen. He has waived any personal participation in the sharing of funds received by the University from SensiGen as a result of any License Agreement with MICHIGAN.

### **License Agreement between the University of Michigan and NanoCure, Inc.**

On a motion by Regent Brandon, seconded by Regent Maynard, the Regents unanimously approved a license agreement between the University of Michigan and NanoCure, Inc., a wholly owned subsidiary of NanoBio Corporation. Because Dr. James Baker is a University employee and also holds an equity interest in NanoCure's parent company, NanoBio, this agreement falls under the State of Michigan Conflict of Interest Statute. The following information is provided in compliance with statutory requirements:

1. Parties to the agreement are the Regents of the University of Michigan and NanoCure, Inc.
2. Licensing Terms:

Field of Use: All fields.

Grant: Exclusive world-wide license, with a right to grant sublicenses.

License Fee: \$50,000.00.

Maintenance Fees: \$20,000 per year for the first three years of the agreement, \$25,000 per year thereafter until Product Sales (or Gross Sublicensing Revenues) reach \$1,000,000 at which point fees will be \$50,000. Fees may be credited against money subcontracted to University by Licensee or by royalties paid by Licensee on Product sales or on Gross Sublicensing Revenues.

Patent Costs: All current and future patent costs will be paid by NanoCure, Inc.

Equity: The University currently owns 1.7% equity in NanoBio Corporation. No additional equity will be taken by the University.

Royalties: 5% on Net Sales of therapeutics or diagnostics. Sublicensing royalties will be 35% of Gross Sublicense Revenues for any Sublicenses executed within the first year of the Effective Date of this agreement, 30% if executed within the second year of this agreement, 25% if executed within the third year of this

agreement, and 10% if executed anytime thereafter.

Performance criteria: Specified milestones must be met in order to maintain the rights granted by the license.

The University will retain ownership of the licensed technology and may continue to further develop it and use it as a research tool.

No use of University services or facilities, nor any assignment of University employees is obligated under the agreement.

3. The pecuniary interest of Dr. Baker arises from his ownership in the parent company, NanoBio. He has waived any personal participation in the sharing of funds received by the University from NanoCure as a result of this license Agreement.

### **Subcontract Agreement between the University of Michigan and Neighborhood Services Organization**

On a motion by Regent Horning, seconded by Regent Maynard, the Regents unanimously approved a subcontract agreement between the University of Michigan and Neighborhood Services Organization. Because Richard Lichtenstein is a University of Michigan employee who will be directing the University's work on this project and is also a member of the board of directors of Michigan Neighborhood Services Organization (NSO), this agreement falls under the State of Michigan Conflict of Interest Statute.

The following information is provided in compliance with statutory requirements:

1. Parties to the agreement are the University of Michigan and Neighborhood Services Organization (NSO).
2. The terms of the agreement are acceptable and conform to University policy. The amount of the subcontract to the University is \$98,757.00. The period of performance is eighteen and one-half (18.5) months (July 15, 2002 through February 29, 2004). Dr. Lichtenstein's effort on this project is listed as 15% (\$22,500).
3. Dr. Lichtenstein has no pecuniary interest on this project stemming from his relationship to NSO.

### **Subcontract Agreement between the University of Michigan and the University of California-Santa Cruz**

On a motion by Regent Newman, seconded by Regent Maynard, the Regents unanimously approved a subcontract agreement between the University of Michigan and

the University of California-Santa Cruz. Because Dr. John Vesecky is a professor emeritus of the University of Michigan and will be the principal investigator on the subcontract with the University of California-Santa Cruz, this agreement falls under the State of Michigan Conflict of Interest Statute. The following information is provided in compliance with statutory requirements:

1. Parties to the agreement are the University of Michigan and the University of California-Santa Cruz.
2. Under the project a total subcontract of \$50,000 is anticipated to cover the period 10/1/02 - 9/30/03. The University's standard subcontract provisions will apply.
3. Dr. John Vesecky has no pecuniary interest in the agreement.

**Amendment to License Agreement between the University of Michigan and Discera, Inc.**

On a motion by Regent Brandon, seconded by Regent Maynard, the Regents unanimously approved an amendment to a license agreement between the University of Michigan and Discera, Inc. ("Discera"), which would add another file to the existing license agreement. Discera is a company started by Clark T.C. Nguyen and Ardesta, LLC. Because Dr. Nguyen is also a University of Michigan employee (currently on a two-year leave from the University), this agreement falls under the State of Michigan Conflict of Interest Statute. The following information is provided in compliance with statutory requirements:

1. Parties to the agreement are the University of Michigan and Discera, Inc.
2. Licensing terms are as follows:

Grant: Exclusive right to practice and commercialize the technology, subject to certain rights reserved by the University to practice it for research and educational purposes, with right to grant sub-licenses consistent with the terms of the original license.

Equity: The University will receive an additional 35,000 shares of Discera stock upon an additional cumulative investment in Discera of at least \$1.5 million.

License Fee: An additional license issue fee of \$9,000 will be applied to reimburse past patent expenses.

Royalties: In addition to the license fee and additional stock, this additional technology will be added to the technology portfolio of the original December 12, 2001 license and will be subject to the same royalty terms as that agreement: the University will receive 13% of total non-product revenues received by Discera, and 1.1% of net sales of products by Discera.

Performance: Specified milestones will be met in order to maintain the rights granted by the license.

Patent Costs: All remaining current and future U.S. and foreign patent costs will be paid by the licensee.

Term: Term of the agreement is for the life of the patents.

Other: No use of University services or facilities, nor any assignment of University employees, is obligated under this agreement.

3. Clark Nguyen's pecuniary interest arises from his ownership interest in Discera. He has waived any personal participation in the sharing of royalties received by the University from the company.

### **Committee Charters**

Vice President Tedesco commented that in February 2002, the Regents Bylaws were amended to establish a committee structure and to name a chair and vice chair of the board. Two standing committees were created: The Finance, Audit and Investment Committee and the Compensation and Personnel Committee. At the June 2002 meeting Regent Maynard became chair of the Compensation and Personnel Committee and Regent Brandon was named chair of the Finance, Audit and Investment Committee.

Since that time each standing committee has been working to develop a committee charter, and the proposed charters are now being presented for approval.

Regent Brandon moved, and Regent Maynard seconded, approval of the following proposed committee charters:

Proposed charter: Compensation and Personnel Committee

The Compensation and Personnel Committee will review all policy matters regarding the evaluation and compensation of the president of the University and make recommendations to the Board of Regents regarding all such matters. Periodically, the committee will review with the president the procedures and methods used in the evaluation of the executive officers.

Proposed charter: Finance, Audit and Investment Committee

The Finance, Audit and Investment Committee will review and make recommendations to the Board on the following matters:

Finance: Including but not limited to the University's financing plans, financial condition, borrowing and investment policies, annual operating budgets, insurance and risk management programs, capital investment criteria and financial reporting practices.

Audit: Including but not limited to the University's annual external audit, internal audit plan and reports, internal controls and the selection of an external auditor. Any matters material financial and/or compliance risk to the University.

Investment: The University's investment performance and investment reporting practices.

("University" includes the Ann Arbor, Dearborn, and Flint campuses, the University of Michigan Health System, and the Department of Intercollegiate Athletics.)

Regent Maynard commented that the Compensation and Personnel Committee charter enables the Regents, in a systematic and positive way, to evaluate and determine the compensation of the president on a yearly basis. It also enables the board to assist the president in her evaluation process of the executive officers.

Regarding the proposed charter for the Finance, Audit and Investment Committee, Regent Brandon observed that the charter is straightforward, and is an outgrowth of benchmarking that the committee did comparing charters and responsibilities for this committee at peer institutions. The president, provost, chief financial officer, and Regents all collaborated to arrive at this charter, which they believe is very appropriate.

The vote was then taken and the committee charters were approved unanimously.

The meeting recessed for 20 minutes and reconvened at 3:50 p.m. for Public Comments.

### **Public Comments**

The Regents heard comments from the following individuals, on the topics indicated: Matt Petering, student, on stabilizing tuition; Jim Mogensen, citizen, on the town-gown relationship; Salah Dean Hussein, student and member of S.A.F.E., on divestment from firms doing business in Israel; David Boyle, alumnus, on “Terrific Taubman and the Two Towers;” Marva Hudson, student, on obtaining assistance in completing her degree program.

There being no further business, the meeting was adjourned at 4:20 p.m. The next meeting will take place January 16, 2003.