

## JOINT USE AGREEMENT

This Joint Use Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010 (“Execution Date”) by and between Miami University (“Miami”), an instrumentality of the State of Ohio, whose address is 501 East High Street, Oxford, OH 45056, and the City of Middletown, Ohio (“Middletown”), a municipal corporation and political subdivision, both duly organized and validly existing under the laws of the State of Ohio, whose address is One Donham Plaza, Middletown, OH 45042.

### WITNESSETH:

WHEREAS, the 128<sup>th</sup> General Assembly of Ohio has enacted Substitute House Bill Number 462, which specifically appropriates \$1,000,000.00 in higher education improvement funds (the “Appropriation”) for the Greentree Health Science Academy (the “Academy”);

WHEREAS, the Appropriation was intended to aid Sinclair Community College (“Sinclair”) in paying for a portion of the costs incurred to build the Academy (the “Project”);

WHEREAS, Middletown intends to build the Academy on land leased from Atrium Medical Center (“Atrium”), whose address is One Medical Center Drive, Middletown, OH 45005, on a 99 year lease, and to sublease the Academy for the instruction and education of health science-related professions;

WHEREAS, Sinclair has concluded that it no longer desires to participate in the Project and has evidenced its desire to transfer the Appropriation to Miami, which will use the Appropriation to pay for a portion of the costs to build the Academy;

WHEREAS, Miami intends to facilitate the goals of higher education by subleasing a portion of the Academy from Middletown and operating it as a Community Center for learning, as described in R.C. § 755.16;

WHEREAS, Miami and Middletown have concluded that the value of Miami's intended use of the Academy is reasonably related to the amount of the Appropriation, and if built, the Academy will provide educational benefits and employment opportunities for Atrium, Middletown, Miami and its students, and the community as a whole;

WHEREAS, the majority of capital required to fund the Project will be raised by issuing Recovery Zone Economic Development Bonds, Series 2010 ("Bonds"), but the remaining portion of Project funding is dependent on the Appropriation, which is now being sought from the State of Ohio; and

WHEREAS, releasing the Appropriation through the Chancellor of the Ohio Board of Regents ("Chancellor") requires compliance with Ohio Administrative Rule 3333-1-03 which specifically calls for execution of a Joint Use Agreement by Miami and Middletown;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

#### AGREEMENT

1. Upon execution of this Agreement and approval thereof by the Chancellor, Miami will submit a request for release of the Appropriation to the Chancellor for the purpose of implementing the Project. If (and only if) the Chancellor grants the request and releases the Appropriation to Miami, Miami shall disburse such funds to Middletown in accordance with the terms of this Agreement.

2. Middletown shall prepare a draw-down schedule detailing the expected amounts, purposes, and dates on which withdrawals will be requested against the Appropriation, and Middletown shall deliver such schedule to Miami.

3. Once the Appropriation has been released to Miami, Middletown may then submit periodic requests to Miami for payment of amounts due on work that has already been completed or is currently underway. Such requests shall be accompanied by documentation of the contracted work. Miami shall then initiate steps to disburse the amount requested to Middletown.

4. The Chancellor agrees to reimburse Miami for the actual costs it incurs in administering these distributions. Miami shall submit invoices to the Chancellor detailing any administrative costs incurred and requesting reimbursement. The total sum for which Miami may be reimbursed in connection with this Project shall not exceed \$15,000, which equals 1.5% of the total amount of the Appropriation.

5. The Appropriation will only be used for capital costs associated with building the Academy such as planning costs, costs associated with site preparation, construction costs, and any other cost reasonably related thereto. The Appropriation shall not be used for any costs or expenses associated with operating the Academy once it has been constructed, nor shall it be used for anything other than capital improvements as defined in House Bill 462, 128<sup>th</sup> General Assembly.

6. The Project shall be planned with educational criteria in mind. Once the Project has been completed, Miami will have the opportunity to lease a portion of the Academy for a period of up to 99 years, for use as a teaching facility to educate students in health-science related professions. In doing so, Miami shall abide by all pertinent rules, regulations, and laws of the federal, state, and local government.

7. Middletown agrees to abide by all pertinent rules, regulations, and laws of the federal, state, and local government in constructing the Academy. This

includes, at a minimum, publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest responsive and responsible bidders.

8. To the extent permitted by the Constitution and laws of the State of Ohio, Middletown agrees to bear full responsibility for the State of Ohio and Miami, its officers, trustees, and employees for any and all obligations, expenses, liabilities, or claims of any kind, from being named as a defendant or party to any lawsuit or adjudicatory proceeding which arises out of (1) the construction or renovation of the Project or (2) an alleged action or omission of Middletown, its officers, trustees, agents, or employees, including, but not limited to Middletown's failure or alleged failure to comply with applicable public bidding requirements or any other federal, state, or local law, ordinance, rule, order, directive, or regulation.

9. The term of this Agreement shall be 20 years ("Term"), commencing on the Execution Date.

10. Either Miami or Middletown may terminate this Agreement upon the default of the other prior to the expiration of its Term by providing the defaulting party with written notice of the non-defaulting party's intent to terminate at least six months prior to the effective date of termination. In the event that this Agreement is terminated, the defaulting party shall return to the State of Ohio a pro rata portion of the Appropriation, to be calculated by dividing the Appropriation by 20 and multiplying that number by the result of 20 minus the number of years of the Term (complete or partial) that have transpired since the Effective Date.

11. Middletown shall ensure through leases with its tenants that the Project is insured with general casualty and liability insurance coverage throughout the term of this Agreement by a reputable and responsible insurance company licensed to do business in the State of Ohio. These policies shall (i) include Miami as an additional insured party, (ii) comply with the requirements set forth in the Construction Agency Agreement between Middletown and Atrium, dated December

6, 2010, which requires a combined single limit of no less than \$5,000,000 per occurrence, and (iii) not be subject to cancellation without prior written notice to Miami.

12. The Chancellor shall, upon request, be provided with pertinent records that measure the nature and extent of Miami's use of the Academy and the terms and conditions governing such use. Miami and Middletown shall cooperate in developing and maintaining such records.

13. All notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given at the earlier of the date when actually delivered or three days after deposit in the United States mail, certified or registered mail, postage prepaid, return receipt requested, and addressed as follows, unless and until either party notifies the other of a change of address:

If to Miami: Miami University  
501 East High Street  
Oxford, OH 45056

If to Middletown: City of Middletown, Ohio  
One Donham Plaza  
Middletown, OH 45042

14. All parties agree that this Agreement shall not be binding or become effective unless and until it is approved by the Chancellor. Such approval shall be evidenced by an appropriate signature hereon.

15. Any amendment to this Agreement shall require prior written approval from Miami, Middletown, and the Chancellor.

16. If any term, covenant, or condition of this Agreement is deemed illegal, invalid, or unenforceable, the remaining terms, covenants, and conditions of this Agreement shall not be affected thereby and shall be enforced to the fullest extent permitted by law.

This Agreement sets forth the entire agreement of the parties concerning the Appropriation, and any and all other oral or written agreements, discussions, representations, promises, and understandings made or arrived at prior to or contemporaneously with this Agreement regarding the Appropriation are hereby mutually revoked, withdrawn, rescinded, and rendered null and void by the parties.

17. This Agreement shall be construed under and governed by the laws of the State of Ohio.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

MIAMI UNIVERSITY

CITY OF MIDDLETOWN, OHIO

  
By: **DAVID K. CREAMER**  
Vice President for  
Finance & Business Services & Treasurer  
Date: 4/18 Miami University

  
By: Judith Gilleland, City Manager  
Date: \_\_\_\_\_

APPROVED:

OHIO BOARD OF REGENTS

LAW DIRECTOR

\_\_\_\_\_  
By: \_\_\_\_\_  
Date: \_\_\_\_\_

  
By: **SARA E. MILLS**  
Date: \_\_\_\_\_