

JOINT USE AGREEMENT

This JOINT USE AGREEMENT (the "Agreement") is made and entered into as of this ___ day of November, 2009, by and between Cuyahoga Community College District (hereinafter referred to as the "College"), an institution of higher education and political subdivision of Ohio, and The Cleveland Museum of Art (hereinafter referred to as the "Museum"), an Ohio non-profit corporation.

WHEREAS, the 127th General Assembly enacted House Bill 562 which includes a specific appropriation of capital improvement resources in the total amount of Three Million One Hundred Thousand Dollars (\$3,100,000), directed to the College for the improvements and modifications to facilities of the Museum and the 126th General Assembly enacted House Bill 699 which includes a specific appropriation of capital improvement resources in the total amount of Three Million Dollars (\$3,000,000), directed to the College for the improvements and modifications to facilities of the Museum, which appropriations have been combined into HB 496;

WHEREAS, capital appropriations released by the Chancellor of the Ohio Board of Regents (hereinafter referred to as the "Chancellor") require compliance with Ohio Administrative Code 3333-1-03(E), which specifically calls for the execution of a joint use agreement;

WHEREAS, the College wishes to utilize the expanded, reconstructed and renovated facilities of the Museum;

NOW THEREFORE, in consideration of the mutual covenants, promises, conditions and terms to be kept and performed, it is hereby agreed between the parties hereto as follows:

1. The College shall submit, to the Chancellor, a request for the release of the Three Million, One Hundred Thousand Dollar (\$3,100,000) appropriation, of which Three Million Fifty Three Thousand Five Hundred Dollars (\$3,053,500) will be for the Museum and Forty Five Thousand (\$46,500) (1.5% of the appropriation) will be for administrative costs to the College. The parties anticipate that the appropriated funds will be released by the Chancellor directly to the College. The Museum shall then submit invoices and related documentation to the reasonable satisfaction of the College, after which the College shall transfer appropriate amounts to the Museum.

2. Further, the College shall submit, to the Chancellor, a request for the release of the Three Million Dollar (\$3,000,000) appropriation, of which Two Million Nine Hundred Fifty Five Thousand Dollars (\$2,955,000) will be for the College and Forty Five Thousand (\$45,000) (1.5% of the appropriation) will be for administrative costs to the College. The parties anticipate that the appropriated funds will be released by the Chancellor directly to the College. The Museum shall then submit invoices and related documentation to the reasonable satisfaction of the College, after which the College shall transfer appropriate amounts to the Museum.

3. The Museum covenants that it shall use the funds to expand, reconstruct and renovate the building and facilities commonly known as the Cleveland Museum of Art and located at 11150 East Boulevard, Cleveland, Ohio, in University Circle and specifically the Project (as hereinafter defined). The Museum represents and warrants that it owns the existing facilities and the property where the project will be completed, and that the Museum has sufficiently insured its facilities and the Project.

4. The Museum has adopted a capital improvements budget to be implemented in part with the funds contemplated by this Agreement. The planned project (the "Project") and the costs associated with it are set forth in Exhibit A which is attached hereto and hereby incorporated into this Agreement.

5. The term of this Agreement, as applied to either appropriation amount, will commence when the Chancellor approves the Agreement.

As for the \$3,100,000 appropriation, its term will extend through its anniversary in 2029. During each year of the term, the Museum shall:

- a. At the discretion of the College, provide five endorsement advertisements per year, with Museum approval as to content, layout and copy.
- b. At the discretion of the College, provide a combination of promotional sponsorships, consisting of community outreach, rotating exhibitions or special exhibitions.

As for the \$3,000,000 appropriation, its term will extend through its anniversary in 2029. During each year of the term, the Museum shall:

- a. Provide, with mutual agreement between the Museum and the College as to content and design, prominent Tri-C logo presence within the Educational Programs section of the Museum's webpage, including an active hyperlink to the Tri-C webpage.
- b. Grant the College, with mutual agreement between the Museum and the College as to location, naming rights to a room, space, or feature of the Museum, which shall be marked with Cuyahoga Community College in the designated format for all donors.
- c. Expand the scope, duties and responsibilities of the current College and Museum advisory board, which is comprised of three (3) members from each organization.

6. Either party may terminate this Agreement with respect to a particular appropriation prior to the expiration of its term by providing notice of the party's intent to terminate a specific appropriation Agreement at least six (6) months prior to the effective date of that termination.

In the event of a termination of the \$3,100,000 appropriation Agreement, the Museum shall immediately return to the State of Ohio a pro rata portion of the state appropriation to be calculated by dividing the amount of the appropriation by twenty (20), and multiplying the result by twenty (20) minus the number of years the Museum provided the benefits during the timeframe established in Section 4 of this Agreement.

In the event of a termination of the \$3,000,000 appropriation Agreement, the Museum shall immediately return to the State of Ohio a pro rata portion of the state appropriation to be calculated by dividing the amount of the appropriation by twenty (20), and multiplying the result by twenty (20) minus the number of years the Museum provided the benefits during the timeframe established in Section 4 of this Agreement.

7. The Museum shall indemnify and hold harmless the College for all costs (including without limitation attorney fees and other costs of defense), losses, liabilities, and claims that arise from or are attendant to the construction, operation and maintenance costs of the Museum and the Project.

8. The Museum, in connection with the Project, shall use competitive bidding procedures equivalent to those enumerated in relevant provisions of Chapter 153 Ohio Revised Code involving publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest responsive and responsible bidders.

9. The funds appropriated for the Project by the State of Ohio shall be used only for capital improvements as defined in House Bills 562 and 699 (re-appropriated as HB 496).

10. The Museum shall comply with all pertinent federal, state, and local laws, including without limitation state administrative provisions.

11. All mailings and notices relating to legal matters involving this Agreement in any way shall be in writing and addressed to the parties at the addresses set forth below or to such other address as either party shall have designated by notice given in accordance with the provisions of this paragraph. All mailings and notices shall be addressed as follows:

The Cleveland Museum of Art
11150 East Boulevard
Cleveland, Ohio 44106-1797
Attn: Timothy Rub, Director

Cuyahoga Community College District
Office of the President
700 Carnegie Avenue
Cleveland, Ohio 44115
with a copy sent separately to the same address, to the attention of "General Counsel"

12. Any amendments to this Agreement would require the prior written approval of the College, the Museum and the Chancellor.

13. This Agreement may not be assigned. Any attempted assignment would be null and void.

14. This Agreement sets forth the entire agreement of the parties concerning its subject matter 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 are hereby mutually revoked, withdrawn, rescinded and rendered null and void by the parties.

15. The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

THE CLEVELAND MUSEUM OF ART

By: Deborah Giblin

Title: Interim Director

Date: 12.16.09

CUYAHOGA COMMUNITY COLLEGE DISTRICT

By: [Signature]

Title: VICEPRESIDENT

Date: 12-16-09

Approved by the Chancellor of the Ohio Board of Regents:

By: _____

Date: _____

EXHIBIT A

<u>Project Description</u>	<u>Estimated Cost</u>
Structural Steel, Concrete, Pre-Cast Panels, Vertical Transportation, Roofing, Fireproofing	\$12,000,000