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DIRECTIVE

December 19, 2007

Re: A JOINT USE AGREEMENT BETWEEN THE OHIO BOARD OF REGENTS
AND CLEVELAND CLINIC FOUNDATION.

The 126th Ohio General Assembly enacted H.B. 699 which includes a specific capital appropriation of \$1,000,000 to the Ohio Board of Regents for the Cleveland Clinic Foundation (CCF). CCF will own and operate the facility to receive state capital funds. State funds will support the construction of Glickman Tower on land owned by CCF between East 93rd and East 96th at 9500 Euclid Avenue, Cleveland, Ohio.

The Ohio Board of Regents' Rule 3333-1-03 requires that a joint use agreement between the institution for which funds are appropriated and the organization which will own or lease and operate facilities to be constructed or improved with such funds must be approved by the Chancellor. The Cleveland Clinic Foundation presented a joint use agreement for approval.

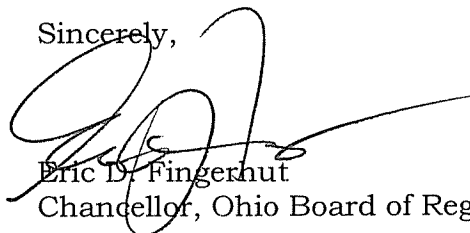
The agreement conforms to Ohio Administrative Code as follows –

- The format of the agreement is appropriate
- The commitment extends no less than fifteen years
- The value of use to Ohio higher education institutions is reasonably related to the amount of the appropriation

Agency staff reviewed the agreement and posted its recommendations to the Regents' web site for purposes of providing a period of public comment before final approval by the Chancellor. The materials posted for comment and the joint use agreement are attached to this document.

Based on my review of staff recommendations, I hereby approve the Joint Use Agreement between the Ohio Board of Regents and Cleveland Clinic Foundation.

Sincerely,



Eric D. Fingerhut
Chancellor, Ohio Board of Regents

11/16

Joint Use Agreement between the Ohio Board of Regents and Cleveland Clinic
Foundation

BACKGROUND

H.B. 699 includes a specific capital appropriation of \$1,000,000 to the Ohio Board of Regents for the Cleveland Clinic Foundation (CCF). CCF will own and operate the facility to receive state capital funds. As required by Ohio Administrative Code section 3333-1-03, Cleveland Clinic Foundation submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support the construction of Glickman Tower on land owned by CCF between East 93rd and East 96th at 9500 Euclid Avenue, Cleveland, Ohio.

REVIEW

The Cleveland Clinic Foundation and Cleveland State University currently use existing CCF facilities to support University research. Both parties expect the joint use of existing facilities will be enhanced and improved by the construction of Glickman Tower.

Throughout the term of the agreement, Glickman Tower will be open to full use by University faculty, technicians, and graduate and undergraduate students per the terms of previous Joint Use Agreements. In addition, the research facilities within Glickman Tower will be open to full use by University faculty, technicians, and graduate and undergraduate students engaged in research and educational programs under existing joint regulatory biology, clinical bio-analytical chemistry, and applied biomedical engineering programs. As both institutions develop additional joint programs, this arrangement will be expanded to include additional faculty, technicians, and graduate and undergraduate students.

The agreement conforms to Ohio Administrative Code as follows –

- The format of the agreement is appropriate
- The commitment extends no less than fifteen years
- The value of use to Ohio higher education institutions is reasonably related to the amount of the appropriation

RECOMMENDATION

Staff recommends Chancellor approval of the Joint Use Agreement between the Ohio Board of Regents and Cleveland Clinic Foundation.

JOINT USE AGREEMENT ANALYSIS

Institutions Involved The Ohio Board of Regents/Cleveland Clinic Foundation

Project Title Glickman Tower

Capital Bill HB 699 Item CAP-088, Cleveland Clinic-Glickman Tower

- Yes 1. Is the facility to be built/improved identified specifically by address or location?
- Yes 2. Does the non-profit organization now own the property or have a long term lease? If not, when will it control the property?
- Yes 3. Does the agreement provide for use of the facility for at least 15 years from the time that it is ready for occupancy?
- Yes 4. If the agreement is terminated, is there a pro rata reimbursement clause? Is the reimbursement formula correct?
- Yes 5. Will funds be used only for capital improvements and not operating costs?
- Yes 6. Will the non-profit hold the institution harmless for all operation/maintenance costs?
- Yes 7. Will the non-profit comply with federal, state and local laws and rules?
- Yes 8. Is the non-profit required to competitively bid as outlined generally in ORC Chapter 153 (published ads, sealed bids, public opening, award to lowest responsive and responsible bidder, etc.)?
- Yes 9. Does the contract provide for a 1.5% administrative fee for the institution?
- Yes 10. Does the agreement require that amendments be approved by the Board of Regents?
- Yes 11. Is a drawdown schedule or payment procedure included?
- Yes 12. Are the extent and nature of spaces and uses adequately described?
- Yes 13. Are the terms and conditions of use of the facility described?
- Yes 14. **Has the institution demonstrated that the value of the use of the facility is reasonably related to the amount of the appropriation? (See attached worksheet)**
- Yes 15. Is the facility insured?

Joint Use Agreement Worksheet

The Ohio Board of Regents

April, 2005

Direction: The purpose of this worksheet is to enable a campus to demonstrate how the value of the uses that will be derived from a Joint Use Agreement is reasonably related to the value of the state capital appropriation made to the partner entity. Section I is to be filled out by the staff of the Board of Regents. Sections II and III are to be filled out by the partner campus.

Example: A campus wishes to enter into a Joint Use Agreement with a 501(C)(3) entity for a state appropriation of \$1,000,000. The annual debt service paid by the state on this appropriation is about \$93,000, for 15 years. To demonstrate that the value of the uses of the facility is reasonably related to the state appropriation, the sum of the campus' educational uses of the facility should roughly equal \$93,000 per year for 15 years.

Section I: State appropriation information.

1. Amount of state appropriation provided: \$ 1,000,000
2. Estimated annual debt service on the appropriation: \$ \$76,876
3. Term of the state bond, in years: 20 years

Section II: Estimated value of use of the facility.

	Use(s) of the facility*	Annual value of use	# of years
a.	<u>Use of space for higher education purposes by Cleveland State University.</u>	<u>\$1,133,333</u>	<u>15 years</u>

Section III: Explain how each use listed in Section II was valued for this analysis.

The research facilities to be contained within the Glickman Tower will provide improved educational and research opportunities and expand existing relationships with higher education institutions including Cleveland State University.

Approximately 68,000 square feet of the Glickman Tower will be made available to higher education institutions for the educational and research opportunities. The Cleveland Clinic and Cleveland State University offer four doctoral programs jointly approved by the Ohio Board of Regents. The Cleveland Clinic provides an integral component of the educational experience for these programs:

1. Applied Biomedical Engineering
2. Clinical-Bioanalytical Chemistry
3. Regulatory Biology
4. Cellular and Molecular Medicine

More than sixty Cleveland State University / Cleveland Clinic graduate students are enrolled in the programs at this time. Many students in the above referenced programs are conducting research in the Cleveland Clinic Glickman Urological Institute which will be moved into the Glickman Tower facility upon its completion.

Building on the success of the joint doctoral programs, the Cleveland Clinic and Cleveland State University recently agreed to expand the relationship to the undergraduate education setting. Cleveland Clinic will play a leadership role in the Cleveland State University undergraduate Scholars Program. Honors students in a wide range of majors will have the opportunity to gain educational experience and credit on site at Cleveland Clinic facilities, including the Glickman Tower.

The uses in Section II were valued based on an estimate of the total cost that would be incurred if Cleveland State University were to construct and equip a redundant facility that could make the same highly-specialized space available for the above-listed programs. Assuming a very conservative new construction cost of \$250/square foot, reproducing the 68,000 square foot facility space as a stand-alone building would cost:

$$\$250/\text{sq. ft.} \times 68,000 \text{ sq. ft.} = \mathbf{\$17,000,000}$$

Use of the Glickman Tower therefore creates a savings of at least **\$1,133,333 per year over the next fifteen years** for the higher education institutions in comparison to building their own facility.

**JOINT USE AGREEMENT
BETWEEN
THE CLEVELAND CLINIC FOUNDATION
AND THE
OHIO BOARD OF REGENTS**

THIS JOINT USE AGREEMENT ("Agreement") is between the CLEVELAND CLINIC FOUNDATION, an Ohio non-profit corporation ("CCF") and the OHIO BOARD OF REGENTS, an instrumentality of the State of Ohio created and existing under Chapter 3333 of the Ohio Revised Code ("Board").

RECITALS

WHEREAS, CCF and Cleveland State University (the "University") have had ongoing research and teaching affiliations for more than 20 years and most recently have entered into Joint Use Agreements in November 1995, May 1996, February 2000 and March 2004 (collectively, the "Existing Joint Use Agreements"), and one of the intentions of this Agreement is to continue and expand that educational relationship; and

WHEREAS, Section 235.10.30 of House Bill No. 699 passed by the 126th Ohio General Assembly appropriates One Million Dollars (\$1,000,000) ("Funds") to the Board to be used for construction of the Cleveland Clinic Glickman Tower and certain capital infrastructure in connection therewith ("Glickman Tower"); and

WHEREAS, this Agreement is being entered into between the Board and CCF as the Funds were appropriated to the Board rather than the University, although it is intended that the University benefit from the terms hereof; and

WHEREAS, the Board has concluded that the value of the use of CCF's facilities and resources by the University as provided in this Agreement is reasonably related to the amount of the Funds;

NOW, THEREFORE, in consideration of the mutual benefits hereunder and the benefits conferred upon the University, it is hereby agreed between the parties as follows:

1. Glickman Tower; Use of CCF's Facilities and Resources by University. CCF will use the Funds to construct Glickman Tower on land currently owned by CCF between East 93rd and East 96th Streets at 9500 Euclid Avenue, Cleveland, Ohio 44195. CCF has adopted a capital improvements budget to be implemented in part with the Funds. The planned project and the costs associated with it are set forth in Exhibit A which is attached hereto and made a part hereof and, for the purposes hereof, constitutes Glickman Tower. Pursuant to the Existing Joint Use Agreements, University faculty, technicians and students are entitled to use certain facilities and resources of CCF in the manner and for the purposes described in the Existing Joint Use Agreements, including the Lerner Research Institute and the Cleveland Clinic Heart Center. The parties hereto expect those uses to be enhanced and improved by CCF's construction of Glickman Tower due to the availability of additional and enhanced research and educational opportunities for University faculty, technicians and students. Throughout the entire term of this Agreement, Glickman Tower will be open to full use by University faculty, technicians and graduate and undergraduate students who are engaged in the uses provided for under the Existing Joint Use Agreements to the same extent Glickman Tower is open to use by CCF physicians and employees. Furthermore, the research facilities to be contained within Glickman Tower will be open to full use by University faculty, technicians and graduate and undergraduate students who are engaged in research and educational programs

under the existing joint regulatory biology, clinical bio-analytical chemistry and applied biomedical engineering programs. This arrangement will be expanded to include additional faculty, technicians and graduate and undergraduate students as additional joint programs are developed in the future. All University faculty, students and other personnel will be subject to all CCF policies regarding their conduct while on CCF premises.

2. Guidelines and Reports. CCF will continue to develop the details and guidelines for implementation of programs referenced in item (1) above. Upon request, CCF shall prepare an annual report that shall include a description of the relationship created by this Agreement, a description of each of the programs referenced in item (1) above and describe how the Funds were made available to CCF through the Board.
3. Term: Termination Prior to Expiration of Term. The term of this Agreement shall commence as of the date of execution set forth below and shall end fifteen (15) years thereafter. If any of the material terms or conditions contained in this Agreement are breached by CCF, then the Board shall have the right to terminate this Agreement upon forty-five (45) days' written notice to CCF and the University, provided that CCF does not cure the breach within 45-day period.
4. Reimbursement of State upon Termination. In the event that this Agreement is terminated for any reason prior to fifteen (15) years from the commencement date, CCF shall remit to the State of Ohio a prorated portion of the Funds, which shall be calculated by dividing the funds contributed by the State of Ohio by

fifteen (15) and multiplying that sum by fifteen (15) less the number of full years that CCF's obligations under this Agreement were fulfilled.

5. Compliance with Laws: Competitive Bidding. CCF shall comply with all pertinent federal, state and local laws as well as state administrative regulations, applicable to the use of Funds hereunder and to the operation of the capital improvements upon which the Funds are expended. CCF in connection with the construction of Glickman Tower shall, to the extent required by law, follow the competitive bidding procedures identified in Ohio Revised Code Chapter 153, including, but not limited to, publishing advertisements to seek bids, receiving sealed bids, and awarding contracts to the lowest responsive and responsible bidder(s).
6. Funds Used Only for Capital Improvements. The Funds provided under this Agreement shall be used by CCF only for capital infrastructure related to the construction of Glickman Tower.
7. Ownership of CCF Insurance. Glickman Tower will be owned CCF and will be fully insured by CCF.
8. Contracting. CCF has entered into a contract for construction of Glickman Tower, and construction of Glickman Tower will be prosecuted with due diligence to completion.
9. Hold Harmless. CCF shall hold the State of Ohio, the Board and the University, and their officers, trustees and employees harmless from any and all obligations, expenses, liabilities or claims of any kind arising out of (1) the construction, operation, or maintenance of Glickman Tower, and/or (2) the Board, the

University, or their officers, trustees or employees being named as a defendant or party to any lawsuit or adjudicatory proceedings, if such lawsuit or adjudicatory proceeding arises out of an action or omission, or an alleged action or omission of CCF, its officers, trustees or employees related to the construction, operation, or maintenance of Glickman Tower, including, but not limited to CCF's failure or alleged failure to comply with any federal, state or local law, ordinance, rule, order, directive or regulation in connection therewith.

10. Amendments. Any amendments to this Agreement shall be in writing, signed by CCF and signed and approved by the Board.
11. Records of University Use. Upon request by the Board and/or University, CCF shall supply the Board and/or the University with all pertinent records, including financial records, if any, which measure the nature and extent of use of CCF's facilities by the University and faculty, technicians and students thereof, the terms and conditions governing such use and the specific benefits derived by the University under this Agreement.
12. Distribution of Funds. Upon execution of this Agreement, the Board shall release the Funds to CCF as soon as reasonably practicable thereafter for the uses specified herein. If requested by the Board, CCF shall provide to the Board such written evidence as may be reasonable to establish CCF's incurrence of costs and expenses in connection with the construction of Glickman Tower in an amount equal to the amount of the Funds.
13. Reimbursement To Board for Administrative Costs: Out of the funds appropriated, CCF shall reimburse the Board for administrative costs incurred by

the Board associated herewith for management fees and reimbursable expenses. Said reimbursement of administrative costs shall equal no more than one and one-half (1.5) percent of the amount appropriated by the State of Ohio. The Board hereby agrees that it will seek reimbursement only of actual out-of-pocket expenses it incurs in administering the request and conveyance of the appropriated funds. Said reimbursement shall be deducted and paid to the Board as those funds are released by the State of Ohio.

14. Binding Nature. This Agreement shall be binding upon and inure to the benefit of CCF and the Board and their respective successors and assigns.
15. Entire Agreement. This Agreement sets forth the entire agreement of the parties hereto relating to the subject matter of this Agreement and the University shall be a third-party beneficiary of the terms hereof.
16. Heading. The headings used in this Agreement are inserted only as a matter of convenience and for reference and should not be given effect in the interpretation of this Agreement.
17. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the
month, day and year signed.

THE CLEVELAND CLINIC
FOUNDATION

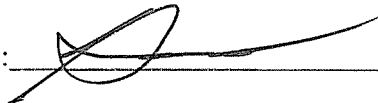
By: 

Name: Michael P. O'Boyle

Title: Chief Operating Officer

Date: 10/29/07

OHIO BOARD OF REGENTS

By: 

Name: Eric D. Fingerhut

Title: Chancellor

Date: 12/17/07

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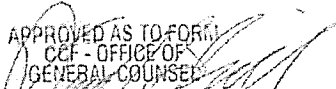
APPROVED AS TO FORM
CCF - OFFICE OF
GENERAL COUNSEL
BY: 
DATE: 10-25-07
CMSI# 041-21168

EXHIBIT A

The research facilities to be contained within the Glickman Tower will provide improved educational and research opportunities and expand existing relationships with higher education institutions including Cleveland State University.

Approximately 68,000 square feet of the Glickman Tower will be made available to higher education institutions for educational and research opportunities. The Cleveland Clinic and Cleveland State University offer four doctoral programs jointly approved by the Ohio Board of Regents. The Cleveland Clinic provides an integral component of the educational experience for these programs:

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