

**NON-DISTURBANCE AND ESTOPPEL AGREEMENT
[PROJECT NAME]**

This Non-Disturbance and Estoppel Agreement (Agreement), made effective as of the ____ day of _____, 20__, by and between the Ohio Facilities Construction Commission (Commission), duly created, existing and operating by virtue of Ohio Revised Code (O.R.C.) Chapter 123 (hereinafter referred to as the Act), a body corporate and politic, an agency of state government and an instrumentality of the State of Ohio (Ohio), performing essential governmental functions of the State, having an office located at 30 West Spring Street, Level 4, Columbus, Ohio 43215; **[Project Sponsor Name]**, with its principal offices at **[address]**, (Project Sponsor); and **[owner name]**, with its principal offices at **[address]** (Fee Simple Owner).

WITNESSETH:

1. WHEREAS, by a certain lease agreement dated _____, 20__ (hereinafter referred to as the Facility Lease Agreement), the Fee Simple Owner leased and rented to the Project Sponsor the real property, the appurtenances and fixtures thereto, commonly known as **[facility name]**, a legal description of which is attached hereto as Exhibit A (Property);
2. WHEREAS, pursuant to Section 123.21 of the Act, the Commission may make and enter into all contracts, commitments and agreements, and execute all instruments necessary or incidental to the performance of its duties and the execution of its rights under the Act and do anything necessary or appropriate to carry out the purposes of and exercise the powers granted under the Act;
3. WHEREAS, the Project Sponsor has obtained or will obtain moneys from the Commission for use in a Cultural Project as the same is defined Chapter 123.28(C) of the Act, and as a condition of receiving such appropriated funds, the Project Sponsor must provide the Commission with certain rights, safeguards, obligations, and priorities with respect to its interest in the Cultural Project including, but not limited to, a Cooperative Use Agreement with the Commission whereby the Project Sponsor grants to the Commission the right to use and occupy the Cultural Project for the term of the Cooperative Use Agreement (Commission's Use Interest); and
4. WHEREAS, the Commission, the Project Sponsor and the Fee Simple Owner desire hereby to establish certain rights, safeguards, obligations and priorities with respect to their respective interests by means of the following agreement.

NOW THEREFORE, for and in consideration of the premises and of the mutual covenants and promises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. Fee Simple Owner acknowledges and agrees to the granting of the Commission's Use Interest by the Project Sponsor pursuant to the terms of the Cooperative Use Agreement and further agrees that so long as the Facility Lease Agreement is in full force and effect and the Project Sponsor shall not be in default under any provision of the Facility Lease Agreement or this Agreement, and no event has occurred which has continued to exist for a period of time (after notice, if any, required by the Facility Lease Agreement) as would entitle the Fee Simple Owner to terminate the Facility Lease Agreement or would cause without further action by the Fee Simple Owner, the termination of the Facility Lease Agreement or would entitle the Fee Simple Owner to dispossess the Project Sponsor thereunder:

- (a) The Commission's Use Interest shall not be terminated or disturbed by any steps or proceedings taken by the Fee Simple Owner in the exercise of any of its rights under the Facility Lease Agreement.
- (b) The Commission's Use Interest shall not be terminated or affected by said exercise of any remedy provided for in the Facility Lease Agreement, and the Fee Simple Owner hereby covenants that any sale by it of the Property shall be made subject to the Commission's Use Interest and the rights of the Commission under the Cooperative Use Agreement.

Section 2. The Project Sponsor and/or the Fee Simple Owner agree to give prompt written notice to the Commission of any default by either the Project Sponsor or the Fee Simple Owner under the Facility Lease Agreement which would entitle The Project Sponsor or the Fee Simple Owner to cancel the Facility Lease Agreement or abate the rent payable thereunder, and both parties agree that notwithstanding any provision of Facility Lease Agreement, no notice of cancellation or termination thereof shall be effective unless the Commission has received notice of the aforesaid and the defaulting party has failed, within 30 days of the date of receipt thereof, to cure such default, or if the default cannot be cured within 30 days, has failed to commence and to pursue diligently to cure the default which gave rise to such right of cancellation or termination.

Section 3. The Project Sponsor agrees to certify in writing to the Commission, upon request, whether or not any default on the part of the Fee Simple Owner exists under the Facility Lease Agreement and the nature of any such default. The Project Sponsor states that as of this date there is no default that, whether currently or with the passage of time, would permit the Project Sponsor to terminate or cancel the Facility Lease Agreement and that the Facility Lease Agreement is in full force and effect, without modification, a copy of said Facility Lease Agreement being attached hereto as Exhibit B. The Project Sponsor further states as follows:

- (a) The Project Sponsor is the tenant under the Facility Lease Agreement for space in the above-referenced Property. The monthly base rent presently is \$_____ per month.

- (b) The Project Sponsor has accepted possession of the Property pursuant to the Facility Lease Agreement. The Facility Lease Agreement term commenced on **[commencement date]**. The termination date of the Facility Lease Agreement term, excluding renewals and extensions, is **[termination date]**. The Project Sponsor has the right to extend or renew the Facility Lease Agreement for: **[number of __ year extensions]**.
- (c) Any improvements required by the terms of the Facility Lease Agreement to be made by the Fee Simple Owner have been completed to the satisfaction of the Project Sponsor in all respects, and the Fee Simple Owner has fulfilled all of its duties under the Facility Lease Agreement.
- (d) The Facility Lease Agreement has not been assigned, modified, supplemented or amended in any way by the Project Sponsor. The Facility Lease Agreement constitutes the entire agreement between the parties and there are no other agreements concerning the Property, and the Project Sponsor is not entitled to receive any concession or benefit (rental or otherwise) or other similar compensation in connection with renting the Property other than as set forth in the Facility Lease Agreement.
- (e) The Facility Lease Agreement is valid and in full force and effect, and, to the best of the Project Sponsor's knowledge, no party thereto, their successors or assigns is presently in default thereunder. The Project Sponsor has no defense, set-off or counterclaim against the Fee Simple Owner arising out of the Facility Lease Agreement or in any way relating thereto, and no event has occurred and no condition exists, which with the giving of notice or the passage of time, or both, will constitute a default under the Facility Lease Agreement.

Section 4. The Fee Simple Owner agrees to certify in writing to the Commission, upon request, whether or not any default on the part of the Project Sponsor exists under the Facility Lease Agreement and the nature of any such default. The Fee Simple Owner states that, as of the date of this Agreement, there is no default that, whether currently or with the passage of time, would permit the Fee Simple Owner to terminate or cancel the Facility Lease Agreement, and that the Facility Lease Agreement, attached hereto as Exhibit B, is in full force and effect and without modification. The Fee Simple Owner further states as follows:

- (a) The Fee Simple Owner is the landlord under the Facility Lease Agreement for space in the above-referenced Property.
- (b) Any improvements required by the terms of the Facility Lease Agreement to be made by the Project Sponsor have been completed to the satisfaction of the Fee Simple Owner in all respects, and the Project Sponsor has fulfilled all of its duties under the Facility Lease Agreement.

- (c) The Facility Lease Agreement has not been assigned, modified, supplemented or amended in any way by the Fee Simple Owner. The Facility Lease Agreement constitutes the entire agreement between the parties and there are no other agreements concerning the Property, and the Fee Simple Owner is not entitled to receive any concession or benefit (rental or otherwise) or other similar compensation in connection with renting the Property other than as set forth in the Facility Lease Agreement.
- (d) The Facility Lease Agreement is valid and in full force and effect, and, to the best of the Fee Simple Owner's knowledge, no party thereto, their successors or assigns is presently in default thereunder. The Fee Simple Owner has no defense, set-off or counterclaim against the Project Sponsor arising out of the Facility Lease Agreement or in any way relating thereto, and no event has occurred and no condition exists, which with the giving of notice or the passage of time, or both, will constitute a default under the Facility Lease Agreement.
- (e) To the best of its knowledge, the Fee Simple Owner has good and marketable title to the Property, there are no easements or restrictions on the Property, and no agreement with the Fee Simple Owner's lender(s), if any, or any other party, that will interfere with the rights or obligations between the Project Sponsor and the Commission as provided in the Cooperative Use Agreement.

Section 5. The Commission, the Project Sponsor and the Fee Simple Owner acknowledge and agree that for purposes of the Cooperative Use Agreement, tenant is defined as the "Project Sponsor", and the Project Sponsor shall be solely responsible for the obligations and liabilities under the Cooperative Use Agreement. The Fee Simple Owner shall have no obligation to fulfill the obligations of the Project Sponsor under the Cooperative Use Agreement and the Fee Simple Owner shall not be liable for any action or inaction of the Project Sponsor under such agreement.

Section 6. The agreements herein contained shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors, successors-in-interest and assigns, and, without limiting such, the agreements between the parties hereto shall specifically be binding upon any purchaser of the Property at foreclosure or otherwise.

Section 7. This Agreement may not be modified other than by an agreement in writing signed by the parties hereto or their respective successors-in-interest.

Section 8. The parties hereto warrant and represent that: (a) they have all requisite power and authority to enter into, deliver and perform this Agreement; (b) the execution, delivery and performance of this Agreement has been duly authorized by all necessary action on the part of each of the parties hereto, if any is so required; and (c) this Agreement has been duly executed and delivered by the parties and constitutes their

valid and legally binding obligation, enforceable against them in accordance with its terms.

Section 9. All notices, statements and other communications to be given under the terms of this agreement shall be in writing and delivered by hand against written receipt or sent by certified or registered mail, return receipt requested, postage prepaid and addressed as provided in the first paragraph of this Agreement, or at such other address as from time to time designated by the party receiving the notice.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the day and year first above written.

PROJECT SPONSOR:

[Insert Project Sponsor Name]

By: _____

Printed Name

Title: _____

STATE OF OHIO
COUNTY OF _____ :

The foregoing instrument was acknowledged before me the _____ day of _____, 20____, by _____, the _____ of _____, on its behalf.

Notary Public

FEE SIMPLE OWNER:

[Insert Fee Simple Owner Name]

By : _____

Printed Name

Title: _____

STATE OF OHIO
COUNTY OF _____ :

The foregoing instrument was acknowledged before me the _____ day of _____,
20____, by _____, the _____
of _____, on its behalf.

Notary Public

**STATE OF OHIO, by and through the
OHIO FACILITIES CONSTRUCTION
COMMISSION**

By: _____
David M. Chovan, Interim Executive
Director

STATE OF OHIO
COUNTY OF _____ :

The foregoing instrument was acknowledged before me the _____ day of _____,
20____, by _____, the _____
of _____, on its behalf.

Notary Public

EXHIBIT A

[Attach Legal Description]

EXHIBIT B

[Attach Facility Lease Agreement]