



# Board of Regents

Ted Strickland Governor  
Eric D. Fingerhut Chancellor

University System of Ohio

## DIRECTIVE 2010-013

March 18, 2010

RE: JOINT USE AGREEMENT BETWEEN THE OHIO STATE UNIVERSITY AND FLYING HORSE PEDIATRIC FARM

H.B. 562 includes a specific capital appropriation of \$250,000 to The Ohio State University for a Flying Horse Pediatric Farm project. Flying Horse is leasing the facility to be improved with state capital funds for fifty (50) years.

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 Ohio State University and Flying Horse Pediatric Farm 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 State University and Flying Horse Pediatric Farm.

This directive will take effect immediately.

Eric D. Fingerhut  
Chancellor, Ohio Board of Regents

M/C

Joint Use Agreement between The Ohio State University and Flying Horse Pediatric Farm

**BACKGROUND**

H.B. 562 includes a specific capital appropriation of \$250,000 to The Ohio State University for a Flying Horse Pediatric Farm project. Flying Horse is leasing the facility to be improved with state capital funds for fifty (50) years. As required by Ohio Administrative Code section 3333-1-03, The Ohio State University submitted a Joint Use Agreement for consideration and approval by the Chancellor.

State funds will support improvements to the Flying Horse facility, located at 5260 State Route 95, Mount Gilead, Ohio.

**REVIEW**

Throughout the entire term of the agreement, Flying Horse will provide the following to the University –

- 1) The equivalent of seven (7) internship cycles per year, each consisting of two full weeks of service.

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 State University and Flying Horse Pediatric Farm.**



## 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 \$5,000,000. The annual debt service paid by the state on this appropriation is about \$390,000 per year, for 20 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 \$390,000 per year for 20 years.

### Section I: State appropriation information.

- |  |    |                |
|--|----|----------------|
| 1. Amount of state appropriation provided:             | \$ | <u>250,000</u> |
| 2. Estimated annual debt service on the appropriation: | \$ | <u>19,219</u>  |
| 3. Term of the state bond, in years:                   |    | <u>20</u>      |

### Section II: Estimated value of use of the facility.

Use(s) of the facility*	Annual value of use	# of years
a. <u>Flying Horse Pediatric Facility</u>	<u>\$ 21,000</u>	<u>20</u>
b. _____	<u>\$ _____</u>	<u>_____</u>
c. _____	<u>\$ _____</u>	<u>_____</u>
d. _____	<u>\$ _____</u>	<u>_____</u>
e. _____	<u>\$ _____</u>	<u>_____</u>
f. _____	<u>\$ _____</u>	<u>_____</u>

(\* List additional uses on separate page as needed.)

### Section III:

*On a separate page, explain how each use listed in Section II was valued for this analysis.*

### Section III: Value Analysis

The estimated value of use of the facility was based on the current projected rate of expense estimated at Flying Horse Farms ("Camp") for services that will be provided by students as interns rather than employees. This estimate is approximately \$1,500 per cycle per student.

The Camp has committed to provide for the equivalent of seven (7) internship cycles per year, each consisting of two full weeks of service. Each internship cycle will involve at least two medical students with the opportunity to expand involvement to include nursing students as well. Due to the extended nature of the weekly camp program, students will amass these hours over two seven day sessions and one pre-experience training and orientation day.

Student service will include one week as an in-cabin counselor and one week assisting medical professionals in the facility's medical center. Therefore, the value is based on costs that would be accrued if the camp had to pay for the services provided by the student interns. Week one service as an in-cabin counselor is conservatively valued at \$200 per week. Week two medical center service is based on calculating the cost of one medical assistant at \$12 per hour for 16 hours each day for seven days totaling \$1,344 per week ( $\$12 \times 16 \times 7 = \$1,344$ ). Therefore, when combined, each student would provide over \$1,500 worth of service to Flying Horse Pediatric Farms during their two weeks at the camp. Fourteen students, each working two weeks, would be valued at \$21,000 per year.

The number of students assigned at any given time shall be mutually agreed upon by the College of Medicine and the Flying Horse Pediatric Farm.

## JOINT USE AGREEMENT ANALYSIS

Institutions Involved The Ohio State University/Flying Horse Pediatric Farm

Project Title Flying Horse Pediatric Farm

Capital Bill HB 562 Item C315U9 Flying Horse Pediatric Facility

- 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 Chancellor of 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

This joint use agreement (this "Agreement") is made and entered into as of the 26 day of January, 2010 by and between The Ohio State University (the "University"), acting under the provisions of Chapter 3335 of the Revised Code of Ohio, and the Flying Horse Pediatric Farm ("Flying Horse"), a non-profit corporation organized and existing under the laws of the State of Ohio.

### RECITALS

WHEREAS, the General Assembly has appropriated funds to the University for the following project (the "project"):

Project Name: Flying Horse Pediatric Facility

Legislation: House Bill 562

Capital Appropriation: C315U9

OSU Project Number: # OSU-090501

In the total amount of Two hundred and fifty thousand dollars (\$250,000), (the "Appropriation").

WHEREAS, in 2008 the Ohio General Assembly appropriated state capital funds in the amount of \$ 250,000 to The Ohio State University for the Flying Horse Pediatric Facility with The Ohio State University College of Medicine to provide for improvements to the Flying Horse Pediatric Farm for the benefit of children with life threatening and chronic illnesses while providing practicum experiences for graduate level students.

WHEREAS, capital appropriations released by the Chancellor of the Ohio Board of Regents (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 University has concluded that the value of the use of the facilities by the University as provided in this agreement is reasonably related to the amount of the appropriation.

NOW, THEREFORE, in furtherance of the above, and in consideration of the mutual covenants, promises, conditions and terms to be performed by each, the University and Flying Horse hereby agree as follows:

### AGREEMENT

1. Commitment. Flying Horse commits to the University that the monies for the project will be used to provide a year-round facility focused on serving children with life threatening and chronic illnesses, partnering with the College of Medicine to provide internship and volunteer opportunities to medical students.

The estimated value of use of the facility was based on the current projected rate of expense estimated at Flying Horse Farm ("Camp") for services that will be provided by students as interns rather than employees. This estimate is approximately \$1,500 per cycle per student.

The Camp has committed to provide for the equivalent of seven (7) internship cycles per year, each consisting of two full weeks of service. Each internship cycle will involve at least two medical students with the opportunity to expand involvement to include nursing students as well. Due to the extended nature of the weekly camp program, students will amass these hours over two seven day sessions and one pre-experience training and orientation day.

Student service will include one week as an in-cabin counselor and one week assisting medical professionals in the facility's medical center. Therefore, the value is based on costs that would be accrued if the camp had to pay for the services provided by the student interns. Week one service as an in-cabin counselor is conservatively valued at \$200 per week. Week two medical center service is based on calculating the cost of one medical assistant at \$12 per hour for 16 hours each day for seven days totaling \$1,344 per week ( $\$12 \times 16 \times 7 = \$1,344$ ). Therefore, when combined, each student would provide over \$1,500 worth of service to Flying Horse during their two weeks at the camp. Fourteen students, each working two weeks, would be valued at \$21,000 per year.

The number of students assigned at any given time shall be mutually agreed upon by the College of Medicine and the Flying Horse.

2. Term. The term of this Agreement shall commence as of the date of its approval by the Chancellor and shall expire twenty (20) years from the date thereafter. In the event that this Agreement is terminated prior to its expiration, Flying Horse shall reimburse the State of Ohio with an amount calculated by (a) dividing the amount of the appropriation actually paid to Flying Horse under the Agreement by twenty (20), and (b) multiplying the resulting amount by (i) twenty (20), less (ii) the number of full years the project has been utilized by the University in accordance with the Agreement (the "Reimbursement Amount"). The Reimbursement Amount shall be paid in cash.
3. Compliance with Laws. On this project Flying Horse shall comply with all pertinent federal, state and local laws as well as state administrative regulations including those relating to competitive bidding and prevailing wage.
4. Funds used for Capital Improvements. Except for the funds used to cover the University's administrative costs, the funds provided under this Agreement shall be used by Flying Horse to provide a facility focused on serving children with life threatening and chronic illnesses, partnering with the College of Medicine to provide internship and volunteer opportunities to medical students. All funds will be utilized by Flying Horse Pediatric Farm to make capital improvements to their facility located at 5260 State Route 95, Mount Gilead, Ohio and shall not be used for operating expenses. Flying Horse, in connection with the Agreement, shall

use, where applicable, competitive bidding procedures equivalent to those enumerated in relevant provisions of Chapter 153 Ohio Revised Code involving (1) publishing advertisements to seek bids, (2) receiving sealed bids, and (3) awarding contracts to the lowest, responsive and responsible bidders.

5. Flying Horse Pediatric Farm and Insurance. Flying Horse is a non-profit corporation organized and existing under the laws of the State of Ohio, and is fully insured. Flying Horse (formerly known as Cypress Ridge Farm) is the lessee of the facility to be improved, located at 5260 State Route 95, Mount Gilead, Ohio. The lease (Exhibit A) of said property having commenced on August 4, 2005 extends beyond the term of this agreement, terminating fifty years from date of execution.
6. Hold Harmless. The University shall have no liability for, and Flying Horse shall indemnify and hold the University harmless from, all construction, operation and maintenance costs of the project.
7. Distribution of Funds and Administrative Costs. Upon execution of this Agreement, the University shall submit to the Chancellor a formal request for the release of the Appropriation. The University shall be paid for administrative costs incurred as a result of the construction of the project. Such administrative costs shall be \$ 3,750 which is equal to 1.5% of the appropriation and shall be paid by the University to itself concurrently with the University's payment to Flying Horse. Flying Horse shall submit a draw request of permitted use of funds to the University in the amount of \$246,250 as soon as practicable upon the signing of this Agreement; but not longer than eleven months from the date of the signing of this Agreement. The University shall, within 30 calendar days after State of Ohio Office of Budget and Management Controlling Board approval for release of funds, disburse the Appropriation.
8. The terms and conditions of such use by the University shall be more favorable than the terms and conditions of use by any other entity to a degree that reasonably reflects the magnitude of the University's investment in the facility. The Chancellor shall, upon request, be provided with pertinent records by Flying Horse and the University that measure the nature and extent of the collaboration between Flying Horse and the University, and the terms and conditions governing such collaboration.
9. Validity. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be illegal, invalid or unenforceable because of judicial construction, then the remaining terms, covenants and conditions of this Agreement or their application to persons or circumstances other than those held invalid or unenforceable shall not be affected thereby; and each term, covenant or condition of this Agreement shall be valid and enforced to the fullest extent permitted by law.
10. Assignment. This Agreement may not be assigned in any form or to any extent by either party without the written consent of the other party.

11. Notices. Any notice required or permitted to be given under this Agreement shall be given either by: (i) first-class certified mail, return receipt requested, addressed to the party at the address shown below, or (ii) personal delivery at the then-current address of such party; in either event, with a copy given by either manner to the person designated below to receive a copy. Such notice shall be effective when delivered to both persons. The current addresses of the parties and the persons to receive copies are, respectively, as follows:

To the University: Christopher M. Culley  
General Counsel  
Office of Legal Affairs  
The Ohio State University  
1590 North High Street  
Suite 500  
Columbus, Ohio 43210-2178

To Flying Horse: Flying Horse Farms  
225 Greenmeadows Drive South, Suite A  
Lewis Center, Ohio 43035

With a copy to: Dr. Linda Stone, M.D.  
Associate Dean, Student Life  
College of Medicine  
B013B Graves Hall  
333 West 10th Avenue,  
Columbus, Ohio 43215

Eilcen Mehl, M.A.  
Program Manager, Office of Student Affairs  
College of Medicine  
B013B Graves Hall  
333 West 10th Avenue,  
Columbus, Ohio 43215

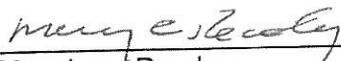
11. Governing Law. This Agreement shall be subject to and interpreted in accordance with the laws of the State of Ohio, and any action brought pursuant to this Agreement shall be brought in a court of competent jurisdiction within the State of Ohio.

12. Amendments. Any amendment to this Agreement will not be effective unless and until approved in writing by the parties hereto and by the Chancellor.

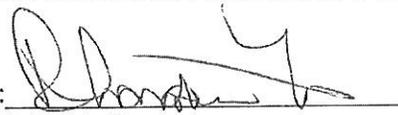
13. Headings. The headings used in this Agreement are inserted only as a matter of convenience and for reference and should not be given effect in the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

The Ohio State University  
JEFF KAPLAN, Senior Vice President  
Office of Administration and Planning

By:  Date: 1/26/10  
Mary Lynn Readey  
Associate Vice President  
Facilities Operations and Development

FLYING HORSE PEDIATRIC FARM

By:   
Rhonda Fraas  
President, Board of Directors



6. Acceptance of Premises; Construction of New Improvements; Reconveyance.

(a) Lessee acknowledges that it has inspected the Premises and accepts the same in the condition thereof on the effective date hereof. Lessor shall not be obligated to make any improvements to the Premises.

(b) Lessor acknowledges that Lessee intends to construct buildings and other facilities (the "Buildings") upon the Premises.

(c) Promptly after the execution of this Lease, Tenant shall, at its sole cost and expense, obtain all necessary building permits and governmental approvals (collectively, the "Permits") for the construction and operation of the Buildings. After obtaining the Permits, Tenant shall, within a reasonable time, cause the Buildings to be constructed on the Premises subject to the terms and conditions of this Lease ("Tenant's Work"). Landlord shall have the right to review the plans and specifications (the "Plans and Specifications") for the Buildings and Tenant shall not make any material changes to the Plans and Specifications prior to the Lessor's review. Tenant's Work sufficient to operate as an overnight camp shall be completed prior to December 31, 2008.

Tenant's Work shall be performed in a good and workmanlike manner, using materials of good quality, free of liens. During the construction of Tenant's Work, Landlord shall have the right, at all reasonable times, to enter the Premises and inspect the progress and quality of Tenant's Work. If Landlord shall reasonably determine, and give Tenant notice, that the Tenant's Work (or any part thereof) is not then substantially in accordance with the Plans and Specifications or the provisions of this Lease, then Tenant shall, promptly after such notice is given, commence action to correct the Tenant's Work or the performance of the same and thereafter diligently pursue such correction to completion.

Neither Landlord's approval of the Plans and Specifications or any modification thereof or supplement thereto, nor Landlord's approval of the Tenant's Work shall constitute any representation or agreement by Landlord as to the adequacy, completeness, propriety, compliance with laws or compliance with the Plans and Specifications or this Lease by the Plans and Specifications, modifications or supplements or by the Tenant's Work.

(d) Tenant's general contractor and all subcontractors performing any work on behalf of Tenant on the Premises must be pre-approved by Landlord in writing and must be bondable and licensed to do business within the state of Ohio. Tenant shall not permit its general contractor or subcontractors to commence Tenant's Work until Tenant has delivered certificates of insurance to Landlord evidencing that such contractors carry General Contractor's and Subcontractor's Required Minimum Coverage and Limits of Liability as follows, which shall be in addition to any and all insurance required to be procured by Tenant pursuant to the terms of this Lease: Worker's Compensation and Employer's Liability Insurance with limits per accident, employee, and policy of \$500,000 each, as well as any insurance required by any Employee Benefit Act or similar statute applicable where the work is to be performed; Comprehensive General Liability Insurance (including Contractor's Protective Liability) with limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate and umbrella coverage (excess liability, umbrella form) with limits of \$4,000,000 per occurrence and \$4,000,000 in the

aggregate; Comprehensive Automotive Liability Insurance with a combined bodily injury and property damage limit of \$500,000; and Builder's Risk Insurance, each in form, substance, and (except as otherwise set forth above) amount reasonably satisfactory to Landlord. Landlord, in its sole discretion, may waive some or all of the requirements of this paragraph.

(e) To the extent Landlord agrees to perform any of Tenant's Work, Landlord will be performing such work in its capacity as an independent contractor, not as Landlord. Any actions or omissions of Landlord in its capacity as an independent contractor will not be imputed to Landlord in its capacity as landlord under this Lease (with it being agreed that any breach or default of Landlord, in its capacity as an independent contractor performing Tenant's Work, will not be deemed a default of Landlord under this Lease, nor will the fact that Landlord agrees to perform any of Tenant's Work relieve Tenant from any of its obligations under this Lease, including, without limitation, Tenant's duty to complete Tenant's Work prior to the Rent Commencement Date).

(f) Provided that the Lessee continues to operate as a not-for-profit corporation under section 501(c)3 of the IRC, and provided that the Lessee is functioning within the Permitted Use, Lessor shall donate those portions of the land on which construction takes place at the commencement of construction. The Lessor reserves the right to contribute the remaining land at any time pursuant to section 3 of this Lease. Any site improvements and the land thereon will be owned by Lessee.

(g) Pending completion of Tenant's Work, Lessor may continue peat moss sales on the Land.

7. Rent Not to Cease by Destruction of Premises. The obligation of Lessee under this Lease shall not terminate by reason of injury to or destruction of the Buildings or improvements on the Premises from any cause.

8. Taxes. Lessee shall pay all taxes, assessments, rates, duties, and other charges of every kind levied, charged, imposed or assessed by or under any present or future law or authority for, upon or against the Premises or any part thereof, commencing with the taxes, assessments, rates, duties and other charges for and after the Rental Commencement Date. Should any governmental taxing authority hereafter impose or create a tax, excise or an assessment, upon or against this Lease for the gross rent payable by Lessee to Lessor hereunder by way of substitution for any ad valorem tax on land and buildings, Lessee agrees to be responsible for and to pay such tax, excise and/or assessment, or to reimburse Lessor for the amount thereof, as the case may be. Provided, however, that the foregoing covenant of Lessee for the payment of taxes does not include any income, franchise or excess-profit taxes that may be charged against Lessor, or any taxes on gifts, legacies, inheritances, demises, or other alienations of the estate of Lessor, or any taxes that may become due on account of ownership of property other than that herein leased or transferred which may become a lien on the property herein leased or transferred or collectible out of the same, or on account of any mortgage hereafter placed upon the fee by Lessor. Lessee shall have the right, but not the obligation, to contest, protest or challenge the amount of any such taxes and Lessor shall cooperate, at no expense to Lessor, in any such proceedings; provided, however, no such contest, protest or challenge by Lessee shall be conducted in such a manner as to cause the loss of the Premises

through sale or forfeiture. If any such contestation could reasonably result in such loss, Lessor may require Lessee to post security (in the form of cash, a bond or a letter of credit, as Lessor may elect) in the full amount of the lien or claim being contested.

9. Utilities; Covenants, Conditions and Restrictions. Lessee shall be solely responsible for installation of all utility services needed. Lessee shall also be solely responsible for, and promptly pay, all charges for electricity, gas, water, sewer, trash collection and any other utility or service used or consumed on the Premises, and Lessee shall not permit any lien or claim to be filed against Lessor or Lessor's interest in the Premises by reason of such charges. Lessor shall not be responsible or liable in any manner for the quality, quantity, interruption or failure in the supply of any such utilities to the Premises except to the extent affected solely by or a result of the willful acts or omissions, or the gross negligence of Lessor, Lessor's servants, tenants, or invitees, or any of them.

10. Default by Lessee. This Lease is made upon the express condition that Lessee shall promptly pay the yearly ground rent hereunder, and shall fulfill and perform all and singular the agreements, conditions, and provisions contained herein, in the manner provided for herein. If, at any time, (1) the yearly ground rent, any taxes, assessments, rates, duties or other charges are not fully paid within ten (10) days after notice from the Lessor that the same have become due and payable, or (2) the non-performance or non-fulfillment by Lessee of any of the other conditions, provisions or agreements herein contained shall continue for a period of thirty (30) days, then in any one of such events, thirty (30) days after Lessee's receipt of notice of such default to Lessee from Lessor in writing, which notice shall be sent by registered or certified mail to the registered agent of the Lessee (or to such other address as Lessee may designate in writing to Lessor), Lessor, at Lessor's option, may declare a forfeiture of this Lease, and re-enter the Premises and repossess and enjoy the same as in Lessor's first and former estate. In addition thereto, Lessor shall be entitled to whatever remedies Lessor may have at law for the collection of any unpaid rent hereunder and for any other sums which may have become due and payable from Lessee hereunder.

The written notice of default from Lessor to Lessee shall state the nature of the default on the part of Lessee, and, notwithstanding the foregoing, Lessee may avoid any such forfeiture proceedings (1) by curing such default within the thirty (30) day period specified above, or (2) if such default cannot reasonably be cured within the thirty (30) day period, by commencing to cure such default within the thirty (30) day period and completing the cure within a reasonable time.

In the event Lessee fails or neglects to pay the taxes, assessments, rates, duties and other charges which are Lessee's responsibility under this Lease or any part of the same, when and as the same respectively become due and payable, then Lessor may pay such taxes, assessments, duties, rates and other charges and the amount so paid for the same shall be a claim against Lessee. This right of the Lessor is cumulative and additional security, the exercise of which is optional with the Lessor, and shall not prejudice Lessor's right to terminate this Lease for default of the Lessee as herein provided.

If this Lease is terminated pursuant to the provisions of this paragraph 10, the Buildings shall revert to, vest in and become absolutely the property of Lessor, provided Lessor without further compensation by Lessor to Lessee whatsoever.

11. Environmental Matters. Lessor represents and warrants to Lessee that: (1) to the best of Lessor's knowledge the Premises do not contain any, nor are the Premises contaminated by, any hazardous or radioactive waste, (2) to the best of Lessor's knowledge, the Premises were never used as a hazardous or radioactive waste storage or disposal site, and, (3) Lessor has never used the Premises as a hazardous or radioactive waste storage or disposal site.

(a) For purposes of this Lease, "CERCLA" means The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended; "Hazardous Material" or "Hazardous Materials" means and includes petroleum, flammable explosives, radioactive materials, any substance defined or designated as a "hazardous substance," under Sections 101(14) and 102 of CERCLA; "Release" shall have the meaning given such term, or any similar term, in Section 101(22) of CERCLA; and "Environmental Law" or "Environmental Laws" shall mean any "Superfund" or "Super Lien" law, or any other federal, state or local statute regulating, relating to or imposing liability concerning any Hazardous Materials as may now or at any time hereafter be in effect and as amended from time to time, including, without limitation, the following, as same may be amended or replaced from time to time, and all regulations promulgated thereunder or in connection therewith: CERCLA; the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); The Clean Air Act ("CAA"); the Clean Water Act ("CWA"); The Toxic Substances Control Act ("TSCA"); and The Solid Waste Disposal Act ("SWDA"), as amended by the Resource Conservation and Recovery Act ("RCRA").

(b) Lessee hereby covenants and agrees that no activity shall be undertaken on the Premises, nor shall any activity be undertaken within the Premises by Lessee or its agents, employees or contractors, which would in either event cause (i) the Premises to become a hazardous waste treatment, storage or disposal facility regulated or subject to regulation under any applicable Environmental Law, (ii) a Release of any Hazardous Material into the environment at, on, in, under or above the Premises in violation of any applicable Environmental Law, or (iii) the discharge of pollutants or effluents into any water source or system, which would require a permit under any federal law, state law, local ordinance or any other Environmental Law pertaining to such matters, in the absence of any such permit; Lessee shall at its sole cost and expense comply with all applicable Environmental Laws relating to or affecting the Premises, and Lessee shall keep the Premises free and clear of any liens imposed pursuant to any applicable Environmental Laws arising out of Lessee's use of the Premises, all at Lessee's sole cost and expense; Lessee will, at Lessee's sole cost and expense, obtain and/or maintain all licenses, permits and/or other governmental or regulatory actions necessary to comply with all applicable Environmental Laws (the "Permits") and Lessee at all times remain in full compliance with the terms and provisions of the Permits; Lessee shall immediately give Lessor or and written notice in the event that Lessee receives any communication from any governmental agency, entity or any other party with regard to Hazardous Materials on, from or affecting the Premises or otherwise with respect to Lessee's use and occupancy of the Premises or the operation of Lessee's business therein; and (iv) Lessee shall, at Lessee's sole cost and expense, conduct and complete all investigations, studies, sampling and testing, and all remedial, removal

and other actions necessary to clean up and remove all Hazardous Materials on, from or affecting the Premises, in accordance with all applicable Environmental laws.

(c) Lessee hereby indemnifies Lessor and agrees to hold Lessor harmless from and against any and all liens, demands, suits, actions, proceedings, disbursements, liabilities, losses, litigation, damages, judgments, obligations, penalties, injuries, costs, expenses (including, without limitation, attorneys' and experts' fees) and claims of any and every kind whatsoever paid, incurred, suffered by or asserted against Lessor and/or the Premises for, with respect to, or as a direct or indirect result of the Release or presence from, in, on, over or under the Premises of any Hazardous Materials regardless of quantity where caused by Lessee or its agents, employees or contractors; the violation of any Environmental Laws relating to or affecting the Premises or Lessee where caused by or within the control of Lessee or its agents, employees or contractors; and the failure by Lessee to comply fully with the terms and provisions of this paragraph 11; provided, however, that nothing contained in this Lease shall make Lessee liable or responsible for conditions existing prior to the commencement of the term of this Lease or first occurring after the expiration of the term of this Lease except where caused by Lessee or its agents, employees or contractors.

(d) The obligations and liabilities of Lessee under this paragraph 11 shall survive the expiration or earlier termination of this Lease.

12. Indemnification of Lessor. Lessee shall indemnify and hold harmless Lessor against all liability, penalties, damages, expenses, and judgments by reason of any injury or claim of injury to person or property, of any nature, arising out of the use, occupation, and control of the Premises, or the adjacent streets, alleys, and sidewalks, by Lessee, its agents, employees or invitees, at any time during the Lease term, including, without limitation those resulting from any work in connection with any alterations, changes, new construction, or demolition or the covenant against the generation, storage or disposal of hazardous waste set forth in paragraph 11 above. Lessee is hereby subrogated to any rights of Lessor against any other parties whomsoever in connection therewith. Lessor shall promptly notify Lessee of any claim asserted against Lessor on account of any such injury or claimed injury to persons or property and shall promptly deliver to Lessee the original or a true copy of any summons or other process, pleading, or notice issued in any suit or other proceeding to assert or enforce any such claim. Lessee shall have the right to defend any such suit with attorneys of its own selection. Lessor shall have the right, if it sees fit, to participate in such defense at its own expense.

13. Brokers. Each party represents and warrants to the other that it has not engaged or used any broker or finder in connection with this Lease. Each party shall defend, indemnify and hold the other party harmless from and against any breach by the indemnifying party of the representation and warranty set forth in the first sentence of this paragraph. No broker is a third party beneficiary of this Lease.

14. Condemnation. If the whole of the Premises, or such portion thereof as will make the Premises unsuitable, in the reasonable opinion of Lessee, for the purposes intended by Lessee, is taken under eminent domain or is condemned for any public use or purpose by any legally constituted authority, then in either of such events this Lease shall cease from the time

when possession is taken by such public authority and this Lease shall terminate as of the date of the surrender of possession. Such termination shall be without prejudice to the rights of Lessor and Lessee to recover compensation from the condemning authority for any loss or damage caused by such taking or condemnation. Neither Lessor nor Lessee shall have any rights in or to any award made to the other by the condemning authority.

15. Amendments. Lessor and Lessee are authorized to amend this Lease from time to time and at any time by a writing executed on behalf of each of them.

16. Force Majeure. Lessor and Lessee shall be relieved of the consequences of any breach, default, penalty or deficiency hereunder (other than any breach, default or deficiency in timely making a payment) which results from a cause or causes beyond their control. Cause or causes which result from a substantial fault or negligence of either party shall not be deemed beyond such party's control. Excused causes include, without limiting the generality of the foregoing, war, insurrection, strikes or other labor disputes, unavailability of materials, unusually inclement weather, riot, rationing, civil disobedience, fire, flood, hurricane, earthquake, any act of God, and actions, proceedings or regulations of any governmental authority (whether legislative, executive, administrative or judicial). The existence of such causes of delay or failure shall extend the time for performance to such extent as may be necessary to enable complete performance in the exercise of reasonable diligence after the causes of delay or failure have been removed.

17. Severability. If any provision of this Lease or the application of any provision to any person or any circumstance shall be determined to be invalid or unenforceable, then such determination shall not affect any other provision of this Lease or the application of said provision to any other person or circumstance, all of which other provisions shall remain in full force and effect. It is the intention of Lessor and Lessee that if any provision of this Lease is susceptible of two or more constructions, one of which would render the provision valid and the other or others of which would render the provision invalid, then such provision shall have a meaning which renders it valid.

18. Captions and Headings. The captions and headings contained in this Lease are included only for convenience of reference and do not define, limit, explain or modify this Lease or its interpretation, construction or meaning, and are not to be construed as a part of this Lease.

19. Duplicate Originals. This Lease may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall constitute a single instrument.

20. Assignment, Subletting, Successors and Assigns. All the terms of this Lease shall inure to and be binding upon the heirs, successors, executors, administrators and assigns of the parties to this Lease. Lessee shall have no right to assign this Lease without Lessor's consent. Lessee is not given and has no right to mortgage, collaterally assign or otherwise assign its interest in this Lease without Lessor's prior consent.

21. Relationship of Parties. Nothing contained in this Lease shall be deemed or construed to create the relationship of principal and agent or of partnership or of joint venture or

of any association whatsoever between Lessor and Lessee, it being expressly understood and agreed that neither the provisions contained in this Lease nor any act or acts of the parties hereto shall be deemed to create any relationship between Lessor and Lessee other than the relationship of landlord and tenant.

22. Insurance. During the term of this Lease, Lessee shall carry (or cause to be carried) at its expense a policy of public liability insurance with coverage adequate to protect against liability from damage claims through public use of or arising out of accidents occurring in or around the Premises in a minimum amount of \$1,000,000 for each occurrence and \$2,000,000 aggregate bodily injury liability and property damage liability. Additionally, Lessee shall insure (or cause to be insured) the Buildings for full replacement value thereof. All such insurance policies shall name Lessor as an additional insured party as its interest appears, and copies of the same shall be provided to Lessor upon request.

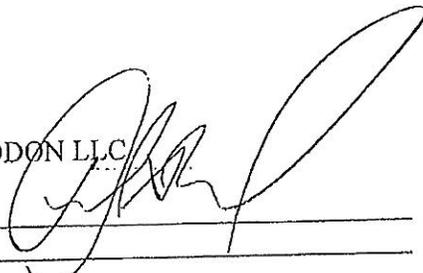
23. Governing Law. This Lease shall be governed, construed and enforced in accordance with the laws of the State of Ohio.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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

Lessor:

MASTODON LLC

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Lessee:

CYPRESS RIDGE FARM

By:   
Name: JENS SALVITANO  
Title: Executive Director

EXHIBIT "A"

LEGAL

---

[To be attached]

FROM :

01 (THU) 17:04

HUMMEL TITLE

FAX NO. : 6142360881

Jan. 06 2006 05:08PM P3

Exhibit A

Legal Description

File Number: HTAC-7168

Situated in the Township of Franklin, County of Morrow and State of Ohio:

Being a part of the Northwest and Southwest Quarters of Section 9, Township 17 North, Range 20 West, and more particularly described as follows:

Beginning at a wood post found at the Northwest corner of the Southwest Quarter of Section 9, said post being referenced by an iron pin found which bears North 86 deg. 56 min. West a distance of 2.50 feet;

Thence South 87 deg. 26 min. 00 sec. East, a distance of 823.67 feet to an iron pin set

Thence North 03 deg. 14 min. 18 sec. East crossing an iron pin set at 930.90 feet a total distance of 980.90 feet to a point in SH 95;

Thence South 56 degrees 13 min. 53 sec. East, with SH 95 a distance of 307.24 feet to a PK nail set;

Thence Southeasterly with SH 95 and with a curve to the right, having a central angle of 10 deg. 49 min. and 10 sec. And a radius of 1273.6 feet, a chord bearing of South 51 deg. 12 min. 00 sec. East and a chord distance of 240.14 feet to a point;

Thence South 03 deg. 14 min. 18 sec. West, crossing an iron pin set at 70.00 feet, a total distance of 3330.92 feet to a stone found in the South line of the Southwest Quarter of Section 9;

Thence North 87 deg. 26 min. 00 sec. West with the South line of the Southwest Quarter of Section 9, crossing an iron pipe found at 281.46 feet, and crossing an iron pipe found at 772.00 feet a total distance of 1282.38 feet to a stone found at the Southwest corner of the Southwest Quarter of Section 9;

Thence North 03 deg. 12 min. 35 sec. East with the West line of the Southwest Quarter of Section 9 a distance of 2651.13 feet to the place of beginning.

Containing 86.926 acres of land, more or less, and subject to all legal highways, right of ways, easements, restrictions and agreements of record.

All iron pins are solid, 5/8 inch, and bear a plastic cap stamped "Garverick L.S. 6816 dated January, 1997.

AND INCLUDING THE FOLLOWING DESCRIBED PROPERTY:

Situated in the Township of Franklin, County of Morrow and State of Ohio and bounded as described as follows:

Being the East part of the Southwest Quarter and the Southwest part of the East part of the Northwest quarter of Section 9, Township 17, Range 20, and described as a whole as follows, to-wit:

Legal Description - Continued

VOLUME 365 PAGE 189

FROM :

01 (TRU) 11:04

FAX NO. :6142360881

Jan. 06 2006 05:09PM P4

*Legal Description - Continued*

Commencing at a stone corner at the Southeast corner of said southwest quarter; thence westerly along the south line of said Section eighty and 22/100 (80.22) rods, to a stone corner, thence northerly along a division line one hundred and sixty and 15/100 (160.15) rods to the north line of said quarter; thence continued northerly in the same direction to the northwest quarter of said Section, forty-two and 20/100 (42.20) rods to a point in the center of the Mt. Gilead-Chesterville State Road; thence southeasterly following the center of said State Road to the east line of said southwest quarter; thence southerly along the east line of said quarter, one hundred and eighteen and 80/100 (118.80) rods to the place of beginning, containing in all eighty and 50/100 (80.50) acres of land.

Parcel Nos. F15-001-A0-231-03 and F15-001-A0-230-00

*Containing in both parcels 167.426 acres more or less*

*End Of Legal Description*

VOLUME 365 PAGE 189

## FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this "Agreement") is effective as of December 31, 2008, (the "Effective Date") and is by and between Mastodon LLC, an Ohio limited liability company ("Lessor" or "Landlord") and Flying Horse Farms f/k/a Cypress Ridge Farm, an Ohio non-profit corporation ("Lessee" or "Tenant"), upon the following terms and conditions:

### RECITALS

WHEREAS, Cypress Ridge Farm, as predecessor-in-interest to Tenant, and Landlord entered into that certain lease dated August 1, 2006 (the "Lease"), whereby Tenant leases from Landlord approximately 200 acres (the "Property"), with a pledge from Landlord to donate the Property to Tenant at a time in the near future;

WHEREAS, the parties have agreed to amend paragraph 6(c) of the Lease to provide that Tenant's Work shall be sufficient to operate as an overnight camp prior to December 31, 2010;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and conditions hereinafter contained, the parties hereto agree to amend the Lease as follows:

1. The foregoing Recitals are incorporated herein as if fully set forth herein.
2. Paragraph 6(C). The last sentence of the first paragraph of section 6(c) is hereby amended to replace "December 31, 2008" with "December 31, 2010 (provided that Landlord may extend this deadline unilaterally so long as Tenant's construction continues to progress)."
3. Paragraph 24, Notices and Payments. Paragraph 24 is hereby added to provide as follows:

Tenant's address for notices:

FLYING HORSE FARMS  
Attn: W. Patrick Smith, MA  
Camp Director  
225 Green Meadows Drive, Suite A  
Lewis Center, OH 43035  
O - 614.505.6161 x3#  
[patrick@flyinghorsefarms.org](mailto:patrick@flyinghorsefarms.org)

Landlord's address for notices:

Mastodon LLC  
Attn: Sean P. Byrne, Esq.  
2950 E. Broad St.  
Columbus, OH 43209  
O - 614.236.3000 x113  
[sbyrne@stagecapital.com](mailto:sbyrne@stagecapital.com)

4. Except as set forth in this Agreement, the Lease shall remain in full force and effect as originally executed and amended by the parties.

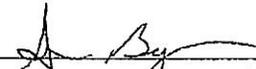
5. This Agreement may be executed in any number of original counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the days and years set forth below.

LANDLORD:

MASTODON LLC,  
an Ohio limited liability company

By:

  
\_\_\_\_\_  
Authorized Representative

Dated:

11/20/09

TENANT:

FLYING HORSE FARMS, an Ohio  
Not for profit corporation

By:

  
\_\_\_\_\_

Dated:

11-20-2009

Name:

MARK A. BIVENCOUR

Title:

CEO

