

CLEVELAND PUBLIC LIBRARY

Finance Committee

April 15, 2014

**RESOLUTION AUTHORIZING RELEASE AND CONSENT TO DISTRIBUTION
FROM THE TRUST OF GRACE BRODY**

WHEREAS, In 2006, Grace F. Brody of Cleveland Heights, Ohio, executed a Restated Declaration of Trust ("Trust"), and designated the Cleveland Public Library and the Cleveland Heights-University Heights Public Library as equal remainder beneficiaries of the Trust Estate. Ms. Brody died on March 12, 2014; and

WHEREAS, The Trust designated that Ms. Brody's residence located in Cleveland Heights be made available to her son to live in upon her death, after which the residence and its contents would be distributed to the Grace F. Brody College Scholarship Fund at the Jewish Community Federation of Cleveland, now known as the Jewish Federation; and

WHEREAS, Ms. Brody's son predeceased Ms. Brody and, therefore, the gift to her son of a life estate in the residence failed. The Trust did not, however, clearly indicate whether the residence would pass to the remainder of the Trust, or be transferred to the Jewish Federation, in the event Ms. Brody's son predeceased her; and

WHEREAS, KeyBank National Association, as Trustee of the Trust, notified the Cleveland Public Library in March of this year that Ms. Brody had passed away, and that the remainder of the Trust Estate would be distributed to the Cleveland Public Library and the Cleveland Heights-University Heights Public Library in equal shares; and

WHEREAS, KeyBank also advised the Library that it intended to sell the residence and its contents, and requested that both remainder libraries waive any potential claims each might have to the proceeds of the residence or its contents upon its sale on the basis that it was Ms. Brody's intent that the residence and its proceeds should be transferred to the Jewish Foundation; and

WHEREAS, KeyBank has presented the Library with a Waiver and Release relinquishing the Library's right to any portion of the proceeds of the residence and authorizing KeyBank to distribute the proceeds to

the Jewish Foundation. This Waiver and Release requires this Board's approval; now therefore be it

RESOLVED That the Board hereby approves the distribution by KeyBank of the proceeds of the residence in the Trust of Grace F. Brody to the Jewish Federation to be added to the Grace F. Brody College Scholarship Fund, and authorizes the Board President to sign the Waiver and Release attached to this Resolution. The Chief Legal Officer has reviewed and approved the legal form of the Waiver and Release.

Waiver and Release

1. KeyBank National Association (“KeyBank”) is the Trustee of the "Restated Declaration of Trust of Grace F. Brody dated June 15, 2006" ("Trust"). The Cleveland Heights Public Library and the Cleveland Public Library (“Libraries”) are each named as the beneficiary of one-half (½) of the residue of the Trust.
2. Attorney James E. Spitz was appointed guardian of Grace F. Brody on June 14, 2008 (Cuyahoga County Probate Court, Case No. 2008 GRD 137572).
3. Grace F. Brody died March 12, 2014.
4. At the time of her death Ms. Brody resided at the Montefiore Home, One David Myers Pkwy., Beachwood, OH 44122. Ms. Brody had resided at Montefiore Home since at least 2008. Prior to that Grace resided at her home located at 3303 Ormond Road, Cleveland Heights, OH 44118 (“Residence”).
5. Ms. Brody transferred title to the Residence to the Trust on March 26, 2009.
6. The first paragraph of Section 3.2 of the Trust provides:

3.2 The Successor Trustee is authorized to retain in trust any residence I may own at the time of my death (or which I may have transferred to the Trust), it being my intention that my said son shall continue to live rent-free in said residence for as long as he wishes to do so. If my son no longer desires to occupy the said residence, or if the Successor Trustee deems it to be in my son’s best interest not to continue to occupy the said property as his home on account of illness or infirmity, then the residence and its contents shall be distributed to the JEWISH COMMUNITY FEDERATION OF CLEVELAND, to be added to the GRACE F. BRODY COLLEGE SCHOLARSHIP FUND, which I now maintain with the Jewish Community Federation. If the Jewish Community Federation so desires, it may instruct the Successor Trustee, in writing, to sell the said residence property and its contents upon the best terms obtainable therefore, and to distribute the net proceeds of the sale to the said Federation for addition to the said Scholarship Fund.
7. On March 11, 2014, Martin C. Boron, Managing Counsel for KeyBank, sent a letter to the Libraries explaining (i) the need to sell the Residence; (ii) that Ms. Brody’s son had predeceased her; (iii) the possibility the sale of the Residence could cause an ademption of the intended gift of the Residence or its proceeds to the Jewish Federation of Cleveland (“Federation”) and to the Grace F. Brody College Scholarship Fund (“Scholarship Fund”); and (iv) KeyBank’s opinion that Ms. Brody intended that the Residence, or the proceeds of the sale of the Residence, should be used to benefit the Scholarship Fund.
8. As a result of Ms. Brody’s death, ademption of the gift of the Residence is no longer an issue.

9. KeyBank's concern with regard to application of the proceeds of the sale of the Residence was because the terms of the Trust on its face provides that the Residence go to the Scholarship Fund only after Ms. Brody's death and after Ms. Brody's son had used the Residence and after her son was no longer making use of the Residence. It is KeyBank's opinion that Ms. Brody's death has substantially eliminated that concern.
10. It is KeyBank's opinion that Ms. Brody intended that the Residence, or the proceeds of the sale of the Residence, should be used to benefit the Scholarship Fund. It is also KeyBank's opinion that no fact or condition precedent is presented in the first paragraph of Section 3.2 of the Trust that prevents the vesting of the Residence and its contents in the Scholarship Fund.
11. It is KeyBank's opinion that a literal reading of the first paragraph of Section 3.2 of the Trust requires that the Residence and its contents, or their proceeds, be distributed to the Scholarship Fund.
12. The purpose of this agreement is to formalize the undersigned parties' agreement to KeyBank's opinion expressed in the immediately preceding paragraphs.

NOW THEREFORE, as an inducement to KeyBank National Association, as Trustee of the "Restated Declaration of Trust of Grace F. Brody dated June 15, 2006", to distribute Residence and its contents, or their proceeds, to the Jewish Federation of Cleveland, to be added to the Grace F. Brody College Scholarship Fund, and to avoid any further cost, expense and delay of litigation to seek a judicial interpretation authorizing the same, the undersigned, for themselves, their administrators, creditors, agents, assigns and all other persons claiming by and through them in any capacity, to the full extent of their actual or potential interests, hereby waive and release, KeyBank National Association and all of its affiliates, from any liability with regard to the distribution of the Residence and its contents or their proceeds, and consents to the distribution of the Residence and its contents or their proceeds to the Jewish Federation of Cleveland, to be added to the Grace F. Brody College Scholarship Fund.

This request is irrevocable.

Each of the undersigned acknowledges that this Agreement will bind his or her Represented Parties at all times after the effective date, both by reason of their mutual undertakings and by reason of the Trustee's reliance on the terms of this Agreement.

The undersigned have had the opportunity to review this Agreement with an attorney of their choice.

This agreement may be executed in several counterparts, each of which will be deemed an original, and all of which together constitute one instrument binding all signatories.

ACCEPTED BY: Board of Trustees of Cleveland Heights Public Library

By: _____

And: _____

ACCEPTED BY: Board of Trustees of the Cleveland Public Library

By: _____

And: _____

ACCEPTED BY KeyBank National Association, as
Successor Trustee under the Restated Declaration of
Trust of Grace F. Brody dated June 15, 2006

By: _____

And: _____