

RESOLUTION NO. 36-2009

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO A LEASE WITH THE BOARD OF EDUCATION OF THE REVERE LOCAL SCHOOL DISTRICT FOR USE AND MAINTENANCE OF BALL FIELDS AND GREEN SPACE AT 4315 WEST STREETSBORO ROAD, RICHFIELD, OHIO AND DECLARING AN EMERGENCY.

BE IT RESOLVED by the Council of the Village of Richfield, Summit County, State of Ohio:

SECTION 1. That the Mayor and the Finance Director be, and they hereby are, authorized and directed to enter into a lease with the Board of Education of the Revere Local School District for the use, maintenance and operation of the ball fields and green space at 4315 West Streetsboro Road, Richfield, Ohio, a copy of which lease is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is immediately necessary in order for the fields to be available for the spring/summer 2009 baseball season; wherefore, provided this Resolution receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

PASSED: 6/2/09

Rick Helak
President of Council

William J. ...
Mayor

Dated: 6/4/09

ATTEST:

Carolyn E. Sullivan
Clerk of Council

LEASE

This lease is made this 21st day of April, 2009 by and between the BOARD OF EDUCATION OF THE REVERE LOCAL SCHOOL DISTRICT, an Ohio body politic ("Landlord"), with a notice address of P.O. Box 340, Bath, Ohio 44410, and the VILLAGE OF RICHFIELD, an Ohio municipal corporation ("Tenant"), with a notice address of 4410 West Streetsboro Road, P.O. Box 387, Richfield, Ohio 44286.

1:00 Premises. Landlord hereby leases to Tenant the real estate located at 4315 West Streetsboro Road, Village of Richfield, Ohio ball fields and green space (the "Premises"). The Premises shall include exclusive use of the property shown on Exhibit A, with the following specific exceptions:

- (a) Landlord excepts and reserves from the Premises exclusive use of the entire building identified at "Richfield Elem" and the 1918-1939 Building on Exhibit A.
- (b) Landlord excepts and reserves from the Premises exclusive use of the garage attached to the building identified as "1918-1939" on Exhibit A, which garage Landlord warrants will be used only for storage and warehousing, as well as other storage areas including freezers/refrigerators now utilized within the 1918-1939 building.
- (c) Landlord excepts and reserves nonexclusive joint use of the driveways, walkways, loading areas and parking areas shown on Exhibit A to serve the building and garage described in (a) and (b) above.

2:00 Term. The initial term of this Lease shall be for six (6) months and shall commence on the first day of March 1, 2009 and shall end on August 31, 2009.

3:00 Rent. Tenant shall pay to Landlord as rent during the initial term the sum of One and No/100 Dollars (\$1.00) per month, payable on the first day of each month in advance, provided that if the initial term shall commence upon a day other than the first day of a calendar month, then Tenant shall pay upon the commencement date of the initial term a pro rate portion of the fixed monthly rent, prorated on a per diem basis with respect to such fractional calendar month.

4:00 Alterations and Improvements by Tenant. Tenant shall have the right to perform alterations and improvements to the Premises, including installation of fixtures, provided that no alterations or improvements of any kind shall be made without the prior written consent of Landlord, which shall not be unnecessarily withheld or delayed. Such alteration, improvements and fixtures shall be made at Tenant's sole cost and expense and shall remain for the benefit of the Landlord at the expiration or earlier termination of the Lease; provided, however, that all equipment and trade fixtures placed in or about the Premises by Tenant shall remain the personal property of Tenant and, at the expiration or earlier termination of this Lease, Tenant shall have the right to remove such personal property from the Premises, restoring and repairing at its expense any damage caused to the Premises caused by the removal of such items of personal property. Tenant shall perform all work and make all alterations and improvements necessary to make the Premises comply with the Americans with Disabilities Act, if required. All work shall be done in a workmanlike and lien-free manner.

5:00 Maintenance and Repair of the Premises.

5:01 Landlord's Obligation. Throughout the term of the Lease, Landlord agrees to perform all ordinary and necessary maintenance and repair to the Premises, other than that to be performed by Tenant hereunder.

5:02 Tenant's Obligation. Tenant accepts the Premises in their "as is" condition. Throughout the term of the Lease, Tenant agrees to (1) provide any ordinary and necessary maintenance and supplies; (2) maintain the athletic fields and landscaping; and (3) keep the Premises in a clean, safe, sanitary and orderly condition, including weed eating.

5:03 Tenant's Scheduled Activities Within premises. The Tenant agrees to provide the Landlord a list of all scheduled activities, dates, times and names of responsible individuals assigned to the activity when the Premises are in use by the Tenant. This list of activities will be submitted on or by the beginning of the baseball season and updated monthly if necessary.

5:04 Tenant's Obligation for Premises Security. The Tenant agrees to assume responsibility for securing the Premises on a daily basis and agrees to assume all costs and liability for any damage occurring from improper securing of the Premises or lack of adequate supervision of sponsored programs and activities.

5:05 Premises Inspection. The Tenant agrees to daily inspections of the Premises by the Landlord's representative to guarantee that the above-mentioned obligations are being complied with and carried out.

6:00 Signs. Landlord and Tenant may each place such signs on or about the Premises as are permitted by law, subject to obtaining any governmental permits required therefore, and which Tenant's signs, at the request of the Landlord, shall be removed by Tenant at the termination of the Lease with any damage caused by such removal fully restored.

7:00 Assignment. Tenant shall not assign this Lease, or sublet the Premises or any part thereof, without the prior written consent of Landlord.

8:00 Idemnification.

8.01 Tenant Indemnification. Tenant agrees to indemnify, defend and save Landlord harmless of and from any and all loss, damage, liability, cost and expense including, but not limited to reasonable attorney's fees, and all other sums which Landlord may pay or become obligated to pay on account of any claim or assertion of liability arising or alleged to have arisen out of any act or omission of Tenant, its agents, invitees, guests, contractors or employees, occurring in, on or about the Premises or relative to Tenant's breach of this Lease or caused by any individual or entity under the control of Tenant. The Tenant shall provide to the Landlord a certificate of insurance in favor of the Landlord, for the period of the Lease in the amount of two million dollars (\$2,000,000.00).

8.02 Landlord Indemnification. Landlord agrees to indemnify, defend and save Tenant harmless of and from any and all loss, damage, liability, cost and expense including, but not limited to, reasonable attorneys' fees, and all other sums which Tenant may pay or become obligated to pay on account of any claim or assertion of liability

arising or alleged to have arisen out of any act or omission of Landlord, its agents, invitees, guests, contractors or employees, occurring in, on or about the Premises or relative to Landlord's breach of this Lease or caused by any individual or entity under the control of Landlord.

9:00 Default.

9.01 Payment of Rent. If Tenant shall at any time be in default of payment of rent and should such default continue for ten (10) days after receipt of Tenant of written notice thereof, it shall be lawful for Landlord to terminate this Lease, to re-enter the Premises, and again possess and enjoy the same, and Landlord, in addition, shall have such other remedies as are not or hereafter provided by law. In the event of such re-entry, Landlord shall have the right to recover the possession thereof by legal proceedings or otherwise. Further, in such event, Landlord shall have the right to re-let the Premises for any period equal to or greater or less than the remainder of the unexpired term of this Lease for any rent which it may deem reasonable to any other tenant which Landlord may select, and for any use and purpose which Landlord may designate.

9.02 Damages. If this Lease is terminated by Landlord by reason of Tenant's default in payment of rent as hereinabove set forth, Tenant shall nevertheless remain liable for any rental additional charges or damages which may be due or sustained prior to such termination and reasonable costs, fees and expenses incurred by Landlord in pursuit of its remedies hereunder. In the event of re-letting, Landlord shall apply the rent therefrom first to the payment of Landlord's reasonable expenses including, but not limited to, expenses of re-letting, and then to the payment of rent and all other sums due from Tenant hereunder. Tenant shall remain liable for any deficiency.

9.03 Other Defaults by Tenant. If there is a default in the performance of any provision of this Lease incumbent upon Tenant to be performed hereunder other than the obligation to pay rent and such default is not cured or is not commenced to be cured with thirty (30) days after receipt by Tenant of written notice from Landlord, the Landlord may, but shall not be obligated so to remedy such breach for the account of Tenant. Tenant shall reimburse Landlord for any monies expended by Landlord in curing Tenant's default on the first day of the month following the Landlord's demand upon Tenant for such reimbursement. Monies expended by Landlord under the provisions of this paragraph shall bear interest at the rate of 18% per annum from the date such monies were paid by Landlord to the date of Tenant's reimbursement to Landlord therefore. Landlord's right to cure a default by Tenant shall not become effective if within the thirty (30) day period Tenant commences to cure the default and thereafter diligently performs such acts as may be necessary to cure its default.

10:00 Condemnation. In the event that (1) the entire Premises and/or parking area serving the Premises, or (2) any portion thereof which would significantly affect the ability of Tenant to conduct its business is taken by the power of eminent domain, or the threat of the exercise thereof, then in either instance Tenant may terminate and cancel this Lease by giving Landlord notice in writing effective thirty (30) days prior to such taking and thereupon both parties shall be relieved of any further obligations hereunder to be performed following the date of such termination. In the event the Lease is not terminated and canceled after a condemnation of a portion of the Premises and/or parking area, the rent shall be equitably reduced. Tenant shall not be entitled to any benefits accruing to Landlord under any such eminent domain proceedings;

provided, however, Tenant reserves all rights to be paid those benefits to which a tenant is entitled by law under such proceeding.

11:00 Subordination. Tenant agrees upon request of Landlord to subordinate its interest in the Premises to any mortgage which may now or hereafter be placed upon the Premises provided Tenant assumes no additional legal or financial obligations thereby and provided further than a separate nondisturbance agreement shall be entered into between such mortgagee and Tenant which shall provide that so long as Tenant is not in default under the Lease, Tenant's leasehold rights shall not be cut off nor its possession thereunder disturbed in or by any default by Landlord to such mortgagee, foreclosure proceedings or sale.

12:00 Quiet Enjoyment. Upon payment by Tenant of the rents herein provided and upon the observance and performance of all of the provision of this Lease on Tenant's part to be observed and performed, Landlord represents that Tenant shall peaceably and quietly hold and enjoy the Premises for the term here of without hindrance or interruption by Landlord or any person or persons lawfully claiming by, through or under Landlord.

13:00 Surrender of Premises. At the expiration or earlier termination of this Lease, Tenant shall surrender and deliver the Premises to Landlord in as good condition and repair as at the commencement of the term of this Lease, normal wear and tear, damage by fire, explosion, the elements and other casualty, together with items of maintenance and repair to be undertaken by Landlord hereunder only excepted.

14:00 Holding Over. Except as provided in Section 2:00, should Tenant hold over the expiration of the initial term or any extended term of this Lease, such holding over shall not be deemed to extend the term or renew this Lease, but the tenancy thereafter shall continue on a month-to-month term upon the terms and provisions herein set forth at the monthly rent then in effect.

15:00 General Provisions.

15:01 Waiver. The waiver by either party of any breach of any provision of this Lease by the other party shall not be deemed to be a waiver of such provision or any subsequent breach of the same or any other provision herein contained.

15:02 Entire Agreement. The exhibits attached to this Lease form a part hereof and are incorporated by reference as if fully set forth herein. This Lease and the exhibits attached hereto set forth all the promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises and there are no promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord and Tenant unless reduced to writing and signed by them.

15:03 Force Majeure. In the event that either party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor trouble, inability to procure materials failure of power, restrictive government laws or regulations, riot, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act shall be excused for a period equivalent to the period of such delay. The provisions of this Section shall not operate to excuse either party from prompt payment of any payments required by the terms of this Lease.

15:04 Consent. No consent which is required to be obtained by one party from the other hereunder shall be unreasonably withheld by the party requested to give consent.

15:05 Notices. All notices required by this Lease shall be in writing and shall be sent by certified mail, postage prepaid, return receipt requested to the notice address set forth in the preamble of this Lease, or at such other address for a party as shall be specified by notice pursuant thereto.

15:06 Broker's Commission. Each of the parties represents and warrants that there are no claims for brokers commission or finder's fees in connection with the execution of this Lease and each of the parties agrees to indemnify the other and hold it harmless from all liability arising from any such claim.

15:07 Binding Effect. Except as may be otherwise provided herein, this Lease and all the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and permitted assigns.

15:08 Governing Law. This Lease shall be construed in accordance with and governed by the laws of the State of Ohio.

15:09 Severability. If any provision in this Lease shall be unenforceable, invalid or void to any extent, for any reason, such provision and all other provisions of this agreement shall remain in force and effect to the maximum extent allowed by law.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

[Signature]
Witness

Witness

Witness

Witness

BOARD OF EDUCATION OF THE REVERE
Local School District
By: *[Signature]*
Its CEO/TREASURER

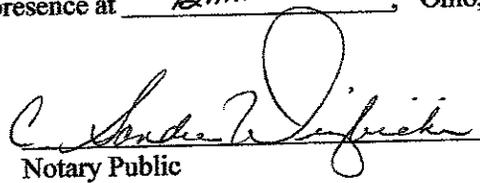
VILLAGE OF RICHFIELD
By: _____
Michael K. Lyons, Mayor
And: _____
Eleanor Lukovics, Finance Director

STATE OF OHIO)
) SS:
COUNTY OF SUMMIT)

Before me, a Notary Public in and for said county and state, personally appeared the above-named BOARD OF EDUCATION OF THE REVERE LOCAL SCHOOL DISTRICT, which executed the foregoing Lease, who acknowledged that DAVE FORREST did sign the foregoing Lease as such officer in behalf of Landlord and by authority of its Board, and that said Lease is his/her free act and deed individually and as such officer and the free act and deed of said Landlord.

SWORN TO before me and subscribed in my presence at BATH, Ohio, this 18 day of May, 2009.

C. SANDRA WIERZBICKI, Notary Public
Residence - Summit County
State Wide Jurisdiction, Ohio
My Commission Expires August 23, 2009


Notary Public

STATE OF OHIO)
) SS:
COUNTY OF SUMMIT)

Before me, a Notary Public in and for said county and state, personally appeared the above named Michael K. Lyons, Mayor and Eleanor Lukovics, Finance Director, of the VILLAGE OF RICHFIELD, the municipal corporation which executed the foregoing Lease, who acknowledged that they did sign the foregoing Lease as such officers in behalf of Tenant, and that said Lease is their free act and deed individually and as such officers and the free act and deed of said Tenant.

SWORN TO before me and subscribed in my presence at Richfield, Ohio, this _____ day of _____, 2009.

Notary Public