

RESOLUTION NO. 77 -1999

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO ENTER INTO A GROUND LEASE WITH THE AKRON-SUMMIT COUNTY PUBLIC LIBRARY SYSTEM AND DECLARING AN EMERGENCY

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

SECTION 1. That the Mayor and Finance Director be, and they hereby are, authorized and directed to enter into a Ground Lease with the Akron-Summit County Public Library System, a copy of which Ground 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 in order to provide for the construction of a new public library in Richfield at the earliest possible time; 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: October 5, 1999

Michael Johnson  
President of Council

Ronald W. Larsen  
Mayor

Dated: 10/5/99

ATTEST:  
Carole Gibson  
Clerk of Council

# GROUND LEASE

BETWEEN

**THE VILLAGE OF RICHFIELD, OHIO**

AS LESSOR  
("Landlord")

AND

**AKRON-SUMMIT COUNTY PUBLIC LIBRARY**

AS LESSEE  
("Tenant")

LOCATION:

Richfield, Ohio

DATED AS OF:

October 1, 1999

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## GROUND LEASE

THIS GROUND LEASE (the "Ground Lease") is made and entered into as of October 1, 1999, by and between the **VILLAGE OF RICHFIELD, OHIO**, an Ohio municipal corporation (hereinafter called "Landlord"), having its principal place of business at 4410 West Streetsboro Road, Richfield, Ohio 44286, and **AKRON-SUMMIT COUNTY PUBLIC LIBRARY** (hereinafter called "Tenant"), having its principal place of business at 55 South Main Street, Akron, Ohio 44326.

WITNESSETH;

1. Grant And Term.
  - a. Premises. In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of Tenant to be observed and performed, the Landlord leases to the Tenant, and Tenant rents from Landlord the premises (the "Premises") described in Exhibit A attached hereto and made a part hereof.
  - b. Use of Additional Areas. The use and occupation by the Tenant of the Premises shall include the use in common with others entitled thereto of the [common areas,] parking areas, service roads, loading facilities, sidewalks, and customer access in and out of the Premises shown and depicted on Exhibit B, and other facilities as may be designated from time to time by the Landlord, subject, however, to the terms and conditions of this Ground Lease and to reasonable rules and regulations for the use thereof as prescribed from time to time by the Landlord.
2. Term. The initial term of this Ground Lease (the "Initial Term") shall commence as of 12:00 a.m. October 1, 1999 (the "Commencement Date"). This Ground Lease shall terminate at 11:59 p.m., September 30, 2098. The phrase "Lease Term," as used in this Ground Lease, shall be the Initial Term of this Ground Lease and any extensions thereof. The phrase "Lease Year" shall mean a period of twelve (12) consecutive months during the Lease Term.
3. Rent. The annual rent during the initial term and any extended term of this Ground Lease shall be One and no/100 Dollars (\$1.00). Tenant shall pay the above amount to Landlord on or before the first day of each Lease Year in advance, at the office of Landlord or at such other place designated by Landlord, without any prior demand therefor, and without any deduction or set-off whatsoever.
4. Building. Tenant shall construct, install and operate library facilities and related site improvements upon the Premises as illustrated in Exhibit B, which facilities and improvements shall be maintained in good repair and condition by Tenant.
5. Utilities.
  - a. Landlord will promptly, at the request of Tenant, grant and provide to Tenant any such easements and rights of way as may be reasonably necessary to allow any utility services to be brought to the Premises. In the event such utility services are not reasonably available to Tenant, and Tenant shall confirm such unavailability within sixty (60) days of the date of this Ground Lease, Tenant may terminate this Ground Lease by written notice to Landlord. In such event, both parties shall be released from any further obligations hereunder.

- b. Tenant shall promptly pay all utilities used or consumed by or supplied to Tenant in connection with its use of the Premises. If Tenant does not pay same prior to delinquency, then in that event, Landlord may pay such amounts, but shall not be obligated to pay, and the amount paid by Landlord shall be collectible from Tenant as additional rent with the next installment of rent due. Tenant shall have the right to bring in utilities to the Premises as Tenant's needs require subject to the provisions of Section 5(a) above. Tenant shall bear all costs of such installation.
6. Taxes. Landlord shall pay all real property taxes and assessments levied upon or against the Premises, except Tenant shall pay any increase in such taxes levied by reason of the construction, maintenance and operation of Tenant's facilities upon the Premises.
7. Use of Premises. Pursuant to Section 721.22 of the Ohio Revised Code, Tenant shall use the Premises exclusively for the operation of a free public library, together with any related services customarily provided in other such publically owned and/or operated facilities. The library shall have regular hours of operation similar to other branch libraries operated by Tenant.
8. Building Permit. Tenant shall at Tenant's sole expense apply for all permits and approvals which may be required by governing authorities for the construction, installation and operation of Tenant's facilities. In the event that, for any reason whatsoever, Tenant is denied authority to construct, install or operate its facilities or to perform all or part of the work necessary to construct or install the same within a reasonable time, Tenant shall have the option to terminate this Ground Lease by giving notice of that fact to Landlord and in the event this Ground Lease is so terminated, Landlord shall return to Tenant any deposits heretofore made by Tenant to Landlord, if any, Tenant and Landlord having no further obligation, one to another, of any kind.
9. Signs. Tenant may install and maintain electric, or other artistic signs capable of being illuminated, advertising its business, products, or services and Tenant shall obtain the necessary permits from governmental authorities for the erection and maintenance of said signs.
10. Assignment - Sublease. Tenant will not assign this Ground Lease in whole or in part, nor sublet all or any part of the Premises, without the prior written consent of Landlord, which consent shall not be unreasonably withheld. The consent by Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting.
11. Default.
- a. Tenant's Default. It is mutually agreed that in the event the Tenant shall default in the payment of rent herein reserved, when due, and fails to cure any default within thirty (30) days after receipt of written notice thereof from Landlord; or if Tenant shall be in default in performing any of the terms or provisions of this Ground Lease other than the provision requiring the payment of rent, and fails to cure such default within thirty (30) days after the date of receipt of written notice of default from Landlord; or if Tenant is adjudicated bankrupt; or if a permanent receiver is appointed for Tenant's property and such receiver is not removed within sixty (60) days after receipt of written notice from Landlord to Tenant to obtain such removal; or if, whether voluntarily or involuntarily, Tenant takes advantage of any debtor relief proceedings under any present or future law whereby the rent or any part thereof

is, or is proposed to be, reduced or payment thereof deferred; or if Tenant makes an assignment for the benefit of creditors; or if Tenant's effects should be levied upon or attached under process against Tenant, not satisfied or dissolved within thirty (30) days after receipt of written notice from Landlord to Tenant to obtain satisfaction thereof; then, and in any of said events, Landlord at its option may terminate this Ground Lease immediately by written notice to Tenant; whereupon this Ground Lease shall terminate. Upon such termination by Landlord, Tenant will at once surrender possession of the Premises to Landlord.

- b. Landlord's Default. In the event Landlord shall neglect to pay when due any obligations on any mortgage or encumbrance affecting title to the Premises and to which this Ground Lease shall be subordinate or shall fail to perform any obligation specified in this Ground Lease, then Tenant may, after the continuance of any such default for ten (10) days after written notice thereof by Tenant to Landlord, pay said principal, interest or other charges or cure such default all on behalf of and at the expense of Landlord and do all necessary work and make all necessary payments in connection therewith and Landlord shall, on demand, pay Tenant, forthwith, the amount so paid by Tenant and Tenant may, to the extent necessary, withhold any and all rent payments and other payments thereafter due to Landlord and apply the same to the payment of such indebtedness.
12. Applicable Law. The parties hereto do hereby agree that all matters of dispute that are to be settled by litigation, negotiation or arbitration at any time by reason of the terms of this agreement, shall be negotiated, tried, litigated, conducted and arbitrated in Summit County, Ohio.
  13. Notices.
    - a. To Tenant. All notices or demands of any kind which Landlord is required or desires to serve on Tenant shall be served by mailing a copy of such notice or demand to Tenant at Akron-Summit County Public Library, 55 South Main Street, Akron, Ohio 44326 certified or registered mail.
    - b. To Landlord. All notices or demands of any kind which Tenant is required or desires to serve on Landlord shall be served by mailing a copy of such notice or demand to Landlord at 4410 West Streetsboro Road, Richfield, Ohio 44286 certified or registered mail.
  14. Insurance. Tenant shall during the entire term at Tenant's own cost and expense keep in force by advance payment of premiums, liability insurance in an amount of not less than One Million Dollars (\$1,000,000) for injury to or death of one person as a result of one occurrence, not less than One Million Dollars (\$1,000,000) for injury to or death of more than one person as a result of one occurrence, and not less than One Hundred Thousand Dollars (\$100,000) property damage, insuring Tenant and Landlord against any liability that may accrue against them or either of them on account of any occurrences in or about the Premises during the term or in consequence of Tenant's occupancy of the Premises and resulting in property damage, personal injury or death, said insurance to protect and indemnify Tenant and Landlord not only against any and all such liability, but also against all loss, expense and damage of any and every sort and kind, including costs of investigation and attorneys' fees and other costs of defense. Tenant shall furnish to Landlord certificates of all insurance required under this paragraph at least fifteen (15) days

prior to the time such insurance is required to be carried by Tenant, and thereafter at least fifteen (15) days prior to the expiration of such policy. Every five years during the Lease Term the parties shall review the amount of insurance required by this paragraph 14, and as they may then reasonably agree, increase such amount. The policies of insurance required by this paragraph 14 shall provide that they may not be canceled without thirty (30) prior written notice to Landlord.

15. Maintenance.

- a. Tenant shall at all times during the term of this Ground Lease keep and maintain in good order, condition and repair the Premises and every part thereof, including, without limiting the generality of the foregoing, all interior and exterior surfaces, windows, doors, and lighting fixtures. Tenant shall also maintain the landscaping around such library facilities.
- b. Tenant shall cause all trash, garbage, and waste from Tenant's operations to be removed regularly.

16. Holding Over. Any holding over after the expiration of the term hereof, with the consent of the Landlord, shall be construed to be a tenancy from month to month at the same terms and conditions herein specified, so far as applicable, except that the fixed minimum rent shall be double.

17. Quiet Possession. Landlord shall place Tenant in the peaceful and undisturbed possession of the Premises on or before the commencement of the term hereof, and Landlord shall secure to Tenant the quiet and peaceful possession of the Premises during the Lease Term.

18. Severability. Should any term, covenant, condition, provision, sentence or part thereof of this Ground Lease be held invalid or unenforceable by any Court of competent jurisdiction, the remaining terms and provisions shall, nevertheless, remain in full force and effect.

19. Broker's Commission. Each of the parties represents and warrants that there are not claims for brokerage commissions or finder's fees in connection with the execution of this Ground Lease, and each of the parties agrees to indemnify the other against, and hold it harmless from, all liabilities arising from any such claim (including, without limitation, the cost of attorney fees in connection therewith). The provisions of this Article shall survive termination of this Ground Lease.

20. Successor - Entirety. The Lease shall be binding upon the parties hereto, their heirs, executor, administrators, successors and permitted assigns; no assignee for the benefit of creditors, trustee, receiver or referee in bankruptcy shall acquire any rights under this Ground Lease by virtue of this paragraph. This Ground Lease may be modified in writing only, and only after the adoption of a resolution by the Village Council of Landlord consenting to such modification. It constitutes the entire agreement of the parties who acknowledge that no oral or other representations have been made by themselves or any agent of either of them with respect to the conditions of said Premises or any obligation of the Landlord hereunder or otherwise.

21. Memorandum of Lease. This Ground Lease shall not be recorded, but at the option of either party a Memorandum of Lease shall be executed and recorded describing the Premises, giving the term of this Ground Lease including the dates of commencement and termination of the Lease Term and renewal rights, if any, and referring to this Ground

Lease. All governmental charges attributable to the execution or recording of the Memorandum of Lease shall be charged to and be paid by the party requesting the recordation thereof.

22. Hazardous Substances. Landlord represents that Landlord has no actual notice or knowledge either of the existence of hazardous materials (as defined hereafter) on or within the ground or groundwater of the Premises or that any such hazardous materials are now or have ever been used, stored, spilled or disposed of on or within the Premises. "Hazardous Substances" shall mean any flammable or explosive materials, petroleum or petroleum products, oil, crude oil, natural gas or synthetic gas usable for fuel, radioactive materials, hazardous wastes or substances or toxic wastes or substances, including, without limitation, any substances now or hereafter defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "toxic materials" or "toxic substances" under any applicable federal, state or local laws or regulations now or hereafter in effect.

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

Signed in the presence of:

George R. Miller  
John M. ...

[Signature]  
Isabel A. ...

The Village of Richfield, Ohio  
By: [Signature]  
Donald H. Larsen, Mayor  
Its: [Signature]  
Eleanor Lukovics, Finance Director

Akron-Summit County Public Library  
By: [Signature]  
Its President  
By: [Signature]  
Its: Secretary



STATE OF OHIO )  
 )SS.  
SUMMIT COUNTY )

BEFORE ME, a Notary Public, in and for said County and State, personally appeared the above named Village of Richfield, Ohio, by Donald H. Larsen, its Mayor, ~~Fleanor Lukovics~~, its ~~Finance Director~~ who acknowledged that he/she did sign the foregoing instrument and that the same is his/her free act and deed, and the free act and deed of said Village of Richfield, Ohio.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at Akron, Ohio, this 7th day of October, 1999.

Jo Ann Maupin  
Notary Public

JOANN MAUPIN, Notary Public  
Residence - Summit County  
State Wide Jurisdiction, Ohio  
My Commission Expires Oct. 10, 2000

STATE OF OHIO )  
 )SS  
COUNTY OF SUMMIT )

BEFORE ME, a Notary Public in and for said County, personally appeared the above named Akron-Summit County Public Library, by Gary M. Rosen its President and James J. Seals its Secretary who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed, and the free act and deed of said Akron-Summit County Public Library.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at Akron-Summit, this 1st day of October, 1999.  
County Public Library

Scott A. Morgan  
Notary Public

SCOTT A. MORGAN  
Notary Public, State of Ohio  
My Commission Expires 3/27/2000

This instrument prepared by:  
Gary T. Gardner  
BROUSE McDOWELL  
500 First National Tower  
Akron, Ohio 44308  
316347.1

Exhibit A

(Description of the Premises)

Exhibit B

(Depiction of the Premises and Site Improvements)