

# RECORD OF RESOLUTIONS

Resolution No. 2018-EE

September 24, 2018

## City of Bellbrook

### Resolution No. 2018-EE

#### **A Resolution Authorizing the City Manager to Enter Into a Lease Agreement with the Greene County Public Library for the Property Located at 57 West Franklin Street.**

WHEREAS, the City of Bellbrook is the owner of the property located at 57 West Franklin Street, Parcel ID L35-0001-0002-0-0086-00, known as Winters Library; and

WHEREAS, this property and the building housed on it has been a library since 1906 in which the building was purchased with the stipulation that it will only be used as a library; and

WHEREAS, the City of Bellbrook recognizes the value of having a library located in the city that is open to all community members and visitors alike; and

WHEREAS, it is recognized that a formal lease agreement should be in place in which both owner and tenant have formalized responsibilities for the property in order to preserve and protect it for years to come.

#### **Now, Therefore, the City of Bellbrook Hereby Resolves:**

Section 1. That the City Manager is hereby directed and authorized to execute the lease agreement attached hereto with the Greene County Public Library for the property known as Winters Library.

Section 2. The lease shall become effective upon signing and shall remain in effect until December 31, 2023 and renewing automatically for succeeding one-year periods.

Section 3. That this resolution shall take effect and be in force forthwith.

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Robert L. Baird, Mayor

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Jami L. Kinion, Clerk of Council

AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE ("Lease"), executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018, is entered into between the CITY OF BELLBROOK, an Ohio municipal Corporation ("Landlord"), and the GREENE COUNTY PUBLIC LIBRARY, an Ohio political subdivision ("Tenant").

WITNESSETH

WHEREAS, the Landlord owns the building which houses the Winters Library ("Library"); and

WHEREAS, Tenant operates the Library in the Premises described below; and

WHEREAS, the Landlord and Tenant have a long established working relationship regarding the Library and this Lease is intended to set forth that relationship; and

NOW, THEREFORE, THE LANDLORD AND TENANT HEREBY AGREE AS FOLLOWS:

PREMISES

Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the property described in Exhibit A attached hereto (the "Premises").

TERM

This lease shall be for the remainder of the calendar year of 2018, expiring December 31, 2023, renewing automatically for succeeding one-year periods unless notice is given by either party in writing of termination at least one hundred eighty (180) days prior to the next termination date.

CONSIDERATION/RENT

In exchange for Landlord providing the Premises for use by the Tenant, the Tenant agrees to provide and operate a free, public library for the benefit of the City and its citizens, and the general public, contingent upon and subject to the availability of sufficient operating funds and so long as the Greene County Public Library Board of Trustees determines that local support and need for a community branch exists using such measures as the board deems appropriate.

## TAXES

Given that both Landlord and Tenant are political subdivisions, they are presently exempt from incurring real estate taxes on Premises. However, if Tenant should ever cause the Premises to lose its tax-exemption, then Tenant agrees to pay any real estate taxes and assessments levied against the Premises during the term of this Lease, after any and all tax-exemption applications have been denied by the State of Ohio.

## UTILITIES

Tenant shall pay all charges against the Premises for water, sanitary sewer, gas, light, heat, electricity, telephone, internet and any other public services furnished to the Premises.

## LIABILITY INSURANCE

Tenant shall procure and maintain for the duration of the agreement commercial general liability insurance for injuries to persons or damages to property which may arise from or in connection with the Tenant's operation and use of the leased premises. Such coverage shall have policy limits not less than \$1 million per occurrence. Tenant agrees to name Landlord, its officials, employees and volunteers as additional insureds. Tenant's coverage shall be primary and non-contributing as respects the Landlord, its officials, employees and volunteers. Tenant agrees to furnish Landlord with certificates of insurance and other proof of such insurance as may be reasonably required by Landlord prior to execution of this agreement and thereafter on or before June 1 of each year during the term of this agreement.

Landlord also agrees to maintain commercial general liability insurance for claims which may arise from or in connection with the Landlord's negligent acts or omissions pertaining to its performance under this agreement.

## PROPERTY INSURANCE

Landlord agrees to keep the building and improvements on the Premises insured for against loss or damage by fire or other casualty insurable under standard extended coverage. Landlord shall not be liable for any stoppage of service or interference with Tenant's business.

### WAIVER OF SUBROGATION

Landlord and Tenant, for themselves and all others claiming under them, including any insurer, waive, to the extent permitted by law, all rights of subrogation against the other for loss, damage, or liability resulting from a risk which is insured against by either party to the extent of any recovery collectible under such insurance; provided, however that this waiver shall apply only when permitted by the applicable policy of insurance.

### INDEMNIFICATION

Under the Constitution for the State of Ohio, and pursuant to R.C. 575.41, both Landlord and Tenant, being taxing political subdivisions, are hereby prohibited from indemnifying and holding each other harmless for liability arising out of any conduct of the other party, its employees or agents, that would cause the other party to lose its sovereign immunity pursuant to R.C. 2744. Therefore, Landlord and Tenant agree to be responsible for its own conduct or that of its employees or agents, that pierces its immunity and results in any claims, expenses, damages or loss by reason of injury, illness or death of any person, or the destruction of any property which arises out of any condition of the Premises or its use.

### ALTERATIONS

Tenant shall not make any alterations without the prior written consent of Landlord, which consent shall not be unreasonably withheld. Any changes shall be made in a workmanlike manner so as not to weaken the building or lessen its value. Tenant will pay all bills incurred for labor and materials for work done at its request, and will cause to be removed from the record within 6 months after filing all notices and affidavits for materialmen's liens filed with respect to the Premises or any part thereof. All additions and permanent improvements or fixtures made by Tenant shall become a part thereof and shall remain the property of the Landlord.

### MAINTENANCE AND REPAIRS

Landlord shall, at its expense, maintain the exterior of the Premises and all common areas, the structure and major building systems, including the HVAC. Landlord shall provide snow removal from the parking lot and sidewalks. Landlord is responsible for care and maintenance of all trees on the premises as well as mowing. Tenant, at its expense, will maintain the interior of the Premises and be responsible for all maintenance, repairs, or replacements thereof. Tenant will be responsible for

landscaping. . Tenant shall keep the Premises in good and clean condition at all times and at the request of the Landlord, remedy any conditions for which Tenant is responsible as set out in this paragraph that Landlord determines are detrimental to the property, and create violations of any applicable health, safety, building or other regulatory laws, rules or violations.

#### DAMAGE AND DESTRUCTION

Should partial damage occur to the Premises during the term of the Lease, which is determined to be the fault or responsibility of the Tenant or is otherwise covered under the Tenant's insurance policies, the Tenant agrees to restore the building to substantially the same condition it was in prior to the damage. Should the insurance proceeds be insufficient for restoration, Tenant or Landlord may elect to terminate the Lease, in which case all insurance proceeds shall be paid to Landlord.

#### CONDEMNATION

If all or part of the Premises shall be taken or condemned by a competent authority for a public or quasi-public use or purpose and if the part so taken includes the building or any part thereof, Landlord, with reasonable promptness, shall make the necessary repairs to and alterations on the Premises necessitated by condemnation. However, Landlord is not obligated to expend more than the amount it receives from the condemning authority for the taking of and residual damage to the Premises. Landlord shall be entitled to all of the proceeds of the condemnation award in excess of those required for restoration.

#### DEFAULT

In the event of any breach of this Lease by Tenant, then Landlord, after written notice of said breach to Tenant, and Tenant's failure to remedy within 10 days, has the right to reenter the Premises. Should Landlord at any time terminate this Lease for any breach, in addition to any other remedy it may have, it may recover from Tenant all damages it may incur by reason of such breach, including the cost of recovering the Premises and reasonable attorney fees, to the extent permitted by law.

#### INSOLVENCY

In the event that the Tenant becomes bankrupt or ceases to be able to operate a public library at the Premises due to funding, this lease shall terminate forthwith, and the Tenant agrees to redeliver

possession of the Premises to Landlord after a reasonable time in which Tenant will remove its property from the Premises.

#### USE OF PREMISES

The Premises shall be used only as a public library and for related and attendant uses. The Premises will not be used for any purpose or in a manner in violation of any laws, Federal, State or local, or of any regulation of any government body having jurisdiction over the premises, including all applicable environmental laws and regulations.

Further, the parties note that pursuant to *Seminole Tribe v. Florida* (1996), 517 US 44, and *Bank One v. Spring Industries, Inc.* (May 7, 1997), N.D. Ohio, 1997 WL 1038870, the State of Ohio and its political subdivisions are immune from the requirements of CERCLA, and the State of Ohio, as well as its political subdivisions, have not waived its immunity from CERCLA.

#### COVENANTS OF FITNESS AND TITLE

Landlord covenants that it has lawful right to occupy the Premises and the right to make this Lease for them aforesaid. Tenant shall be put in exclusive possession of the Premises and its occupancy shall not be disturbed so long as it is not in default under this lease.

#### SUCCESSORS AND ASSIGNS

The conditions, covenants and agreements in the foregoing Lease to be kept and performed by the parties hereto shall bind and inure to the benefit of their successors and assigns.

#### SUBLETTING AND ASSIGNMENT

The foregoing notwithstanding, Tenant may not sublet the Premises or assign the Lease without prior written consent of Landlord.

#### NOTICES

All notices to be given by either party shall be given in writing and by depositing the same in the United States mail, postage prepaid, certified, return receipt requested, and addressed to the parties at the then current addresses of each party. Should the address of either party for the purposes herein changes such party shall give written notice to the other of the new address.

RECORDATION

It is the intention of the parties that this Lease shall not be recorded. The parties at the request of either forthwith shall execute a short-form Lease designated "Memorandum of Lease" containing dates of commencement and expiration of the term of the Lease and the otherwise in a form that is entitled to be recorded.

SEVERABILITY

If any provision or provisions of this Lease shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

IN WITNESS WHEREOF, Landlord and Tenant have signed this Lease in duplicate, each executed copy hereof to be considered an original, on the day and year first written herein.

CITY OF BELLBROOK

"Landlord"

By: \_\_\_\_\_

Melissa J. Dodd, City Manager

GREENE COUNTY PUBLIC LIBRARY

"Tenant"

By: \_\_\_\_\_

STATE OF OHIO, COUNTY OF \_\_\_\_\_, SS:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Melissa J. Dodd, City Manager, on behalf of the City of Bellbrook, Ohio, an Ohio municipal corporation.

\_\_\_\_\_

Notary Public

STATE OF OHIO, GCPL OF \_\_\_\_\_, SS:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018,  
by \_\_\_\_\_ on behalf of said Greene GCPL District Library, an Ohio political  
subdivision.

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Notary Public

# EXHIBIT A

Greene County, Ohio

6/18/2018 1:40:38 PM

Parcel ID: L35-0001-0002-0-0086-00

Tax Year: 2017

Card: 1 of 1

Owner: CITY OF BELLBROOK OHIO  
 Mailing Name/Address:  
 CITY OF BELLBROOK OHIO  
 15 E FRANKLIN ST  
 BELLBROOK OH 45305  
 Tax District: L35 - BELLBROOK CITY

Description: BELLBROOK 66 FT  
 LOT 87  
 W FRANKLIN ST  
 Property Address: 57 W FRANKLIN ST  
 Class: E - EXEMPT PROPERTY OWNED BY MUNICIPALS  
 Map/Routing: 0002.00 020.00  
 Neighborhood: 00348.000  
 Parcel Tieback:



L35000100020008600 03/10/2012

### LAND DATA

Desc	Type	Effective Frontage	Depth	Square Footage	Acres	Value
Primary	SQUARE FOOT			10890		\$27,230.00

### SALES DATA

Sale Date	Type	Amount	Source

### STRUCTURE DATA

Structure	611 - LIBRARY	Structure Value	\$167,620.00
Year Blt	1965	Total OBY Value	\$4,500.00
Eff Year		Total Card Value	\$172,120.00
# Units			
Ident Units	1		
Covered Parking			
Uncovered Parking			
Total Sq Feet	3819		

### VALUES

	Land Value	Bldg Value	Total Value	Value Date
Appraised	\$27,230.00	\$172,120.00	\$199,350.00	8/18/2017
Assessed (35%)	\$9,530.00	\$60,240.00	\$69,770.00	

### TAXES

	Delinquent	1st Half	2nd Half	Total
Real:	\$0.00			
Special:	\$0.00			
Total:	\$0.00			
Total Tax:				\$0.00
Amount Due:				\$0.00

### PROPERTY FACTORS

Topography	Utilities	Street/Road	Traffic
LEVEL	ALL PUBLIC	PAVED	HEAVY

### OTHER BUILDING & YARD ITEMS

Description	Yr Blt	Area	Units	Value
PAVING ASPHALT PARKING	1965	5100	1.00	\$4,500.00

