

REAL ESTATE PURCHASE CONTRACT

This Real Estate Purchase Contract (the "Agreement") is entered into as of the ____ day of _____, 2021 (the "Effective Date") by and between the **CITY OF AVON**, Ohio, a municipal corporation organized and existing under its Charter and the Constitution and laws of the State of Ohio ("City"), and the **LORAIN PUBLIC LIBRARY**, a free public library organized and existing under the laws of the State of Ohio, acting by its Board of Library Trustees (that Library and Board of Trustees collectively referred to as the "Library").

RECITALS

- A. The City is the owner of the real property located at 37485 Harvest Avenue, Avon, Ohio, consisting of 2 acres, more or less, being Lorain County Parcel No. 0400010111024, along with all improvements located thereon, including the building (the "Building") located thereon which is commonly known as the Avon Branch of the Lorain Public Library ("Avon Branch"), and all appurtenances thereto (collectively, the "Property"), as generally depicted on Exhibit A attached hereto and incorporated herein by reference.
- B. The Library currently leases the Property from the City pursuant to the terms and conditions of that certain Lease dated August 31, 1994 ("Lease").
- C. The Library owns the land adjacent to the Avon Branch, which land is located at 37270 Colorado Avenue, Avon, Ohio, consisting of 0.89 acres, more or less, being Lorain County Parcel No. 0400010111025 (the "Library Property").
- D. The Library desires to purchase the Property from the City, and the City desires to sell the Property to the Library, in order for the Library to expand the Avon Branch onto the adjacent Library Property (after expansion, the Avon Branch will be the "Expanded Avon Branch").
- E. Ohio Revised Code Section 721.22 permits the transfer of the Property by the City to the Library for library purposes upon such lawful terms as are agreed upon between the City and the Library. "Library Purposes" shall mean a public library established under state enabling laws or regulations to serve a community, district, or region, and provides at least the following: (1) an organized collection of printed or other library materials, or a combination thereof; (2) paid staff; (3) an established schedule in which services of the staff are available to the public; (4) the facilities necessary to support such a collection, staff, and schedule, and (5) is supported in whole or in part with public funds (definition derived from the Institute for Museum and Library Services).

Now, therefore, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Library hereby agree as follows:

AGREEMENT

1. **Agreement to Sell and Convey:** The City hereby agrees to sell and convey the Property to the Library, and the Library hereby agrees to purchase the Property from the City, subject to the terms and conditions set forth herein.

2. **Consideration:** As consideration for the sale of the Property by the City to the Library, and in addition to all of the covenants, obligations and conditions set forth herein, the Library also agrees to provide the City the following, all of which the City agrees is of substantial value:

- a) Instead of relocating the Avon Branch, the Library will continue to operate a free public library in the City of Avon for the benefit of the residents of the City and will offer enhanced services at the Expanded Avon Branch;
- b) In addition to the income tax that will continue to be paid to the City by the Library employees who work at the Avon Branch, the City will benefit from the extra income tax to be paid by any new employees hired at the Expanded Avon Branch;
- c) The City shall have priority to use meeting space at the Expanded Avon Branch on a schedule to be determined and mutually agreed upon by the City and the Library;
- d) The Library shall provide archival services for the City in a manner to be determined but possibly including a “feature room” in the Expanded Avon Branch to showcase historical City documents;
- e) The Library will assume all risk at the Avon Branch during construction of the Expanded Avon Branch; and
- f) The Library will support and collaborate with the City in the City’s development of a senior center near the Property.
- g) The Library agrees to only utilize the facility for Library Purposes.

3. **Due Diligence/Inspections:** Since the Library currently is a tenant of the Property under the terms of the Lease and is responsible for maintaining the Property, the Library does not require any inspections of the Property prior to the Closing (defined below) on the purchase of the Property under the terms of this Agreement.

4. **Survey:** The Library may, at the Library’s option and at its sole cost and expense, obtain a survey (the “Survey”) of the Property, including an acreage and square foot certification prepared by a registered land surveyor duly certified in the State of Ohio and certified to the Title Company and to the Library in full ALTA form. At Closing, the City and the Library shall mutually agree to the legal description set forth on the Deed (defined below) if the surveyed description differs from the legal description contained in the deed pursuant to which the City acquired the Property.

5. **Title:** Within twenty (20) days after the Effective Date of this Agreement, the Library may obtain a title insurance commitment (the "Title Commitment") from a Title Company of the Library's choice (the "Title Company") to issue to the Library a current ALTA Owner's Title Insurance Policy with all standard and general exceptions deleted and endorsed over so as to afford full "extended form coverage" insuring the marketability of the Property, subject only to the following Permitted Exceptions: a) applicable governmental laws, including zoning ordinances; b) covenants, restrictions, conditions and easements of record, unless such covenants, restrictions, conditions and easements, in the Library's sole determination, interfere with, obstruct or impose costs on, or otherwise impair the Library's use and enjoyment of the Property; and c) the lien for real estate taxes due and payable after the Closing date. The City shall cause any and all mortgage liens and other monetary liens and encumbrances affecting the Property and attributable to the City, if any, to be paid in full and released at Closing. From and after the Effective Date of this Agreement, the City shall not permit any third party to adversely affect the City's title to the Property and will not permit any new or additional exceptions to title to be created except those that will be removed at or prior to the Closing Date (as defined below).

Within ten (10) days of the Library's receipt of the Title Commitment, the Library shall notify the City in writing of the Library's approval or disapproval of any matter contained in the Title Commitment or Survey, if a Survey is obtained (collectively, the "Defects"), with such notice to be known as the "Defect Notice Letter". Any matter not objected to by the Library within such period shall be a Permitted Exception. The City shall have ten (10) days after receipt of the Library's Defect Notice Letter to provide written notice to the Library as to which of the Defects the City is willing to cure prior to Closing ("City's Defect Response"). The Library shall have five (5) days after receipt of the City's Defect Response to terminate this Agreement, if the Library so chooses. The Library's failure to terminate this Agreement within such five (5) days shall be deemed a waiver of all Defects that the City did not agree to cure in City's Defect Response, and all such matters shall be deemed to be Permitted Exceptions.

6. **Deed:** The City agrees that the Property shall be conveyed to the Library in fee simple by a recordable limited warranty deed (the "Deed"), free and clear of all liens and encumbrances, except the Permitted Exceptions. The Deed shall include a restriction that, if the Property is no longer used for Library Purposes, the City has the right (but not the duty) to reacquire the Property. The City shall incur no costs in reacquiring the property. Any costs incurred by the City, including legal fees, will be reimbursed immediately by the Library. The Library agrees to execute all documents to effect the transfer back to the City.

7. **Real Property Taxes:** The Property is tax exempt, but if any real property taxes are determined to be due, the City shall pay all taxes which are a lien on the Property and they shall be prorated through the date of the closing. If the tax rate has not yet been determined, the preceding year's rate shall be used in making such proration. All assessments shall be paid in full, whether certified to the Lorain County, Ohio or not.

8. **Closing:** If not earlier terminated as allowed by the terms of this Agreement, the closing of this Agreement shall take place within sixty (60) days of the complete execution of this Agreement (the "Closing", with the date of Closing being referred to herein as the "Closing Date").

At Closing, the City shall deliver to the Library the following:

- a) The Deed for the Property proper for recording and conveying fee simple insurable and marketable title in the Property to the Library free, clear and unencumbered both of record and in fact, subject, however, to the Permitted Exceptions and a restriction that if the Property is no longer used for Library Purposes, the Property will revert back to the City. (See ¶6, supra.)
- b) A certification of non-foreign status pursuant to Section 1445(b)(2) of the Internal Revenue Code and an IRS Form 1099S.
- c) A typical title affidavit, as required by the Title Company, and any other documents reasonably required by the Library or the Title Company or other provisions of this Agreement to affect the Closing.
- d) Exclusive possession of the Property.
- e) A Settlement Statement.

At Closing, the City shall pay the following:

- a) Any amounts that are required to satisfy any outstanding liens.
- b) Amounts due to the Library by reason of prorations or credits hereunder, if any.

At Closing, the Library shall deliver to the City the following:

- a) A Settlement Statement.
- b) Any other documents reasonably required by the City or the Title Company or other provisions of this Agreement to affect the Closing.

At Closing, the Library shall pay the following:

- a) All of the escrow fee.
- b) All amounts due to the City by reason of prorations hereunder, if any.
- c) Transfer taxes and conveyance fees (if not exempt).
- d) All costs associated with preparation and recording of the Deed.
- e) The cost of the Title Commitment, the Title Insurance Policy and any endorsements thereto.
- f) All other fees and charges which are required to be paid by either the Library as purchaser or the City as seller pursuant to this Agreement or in accordance with community custom for Lorain County, Ohio.

9. **Representations and Warranties of the City:** The City represents and warrants to the Library that the following statements are true as of the date hereof and shall continue to be true on the Closing Date:

- a) The City is a municipal corporation organized and existing under its Charter and the Constitution and laws of the State of Ohio, and has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder.
- b) The execution, delivery and performance of this Agreement by the Mayor on behalf of the City and the consummation by the City of the transactions contemplated hereby have been duly authorized by legislation adopted by City Council, and this Agreement constitutes the legal, valid and binding obligation of the City enforceable against it in accordance with the terms and provisions hereof.
- c) To the City's actual knowledge, there is no pending or contemplated claim, litigation, condemnation, administrative action, or other legal proceeding involving or affecting any portion of the Property.
- d) To the City's actual knowledge, except for the Library's Lease which both the City and the Library agree automatically shall terminate upon Closing, there are no oral or written leases, agreements or contracts in any way affecting or related to the Property which will be in effect after Closing other than (i) easements and other matters of record; and (ii) those which the City has disclosed in writing to the Library, and no party other than the Library has any enforceable legal or equitable right to acquire the Property.
- e) To the City's actual knowledge, the City is not in default of any agreement affecting the Property.
- f) To the City's actual knowledge, except for the real estate tax exemption that the City enjoys as a municipal corporation, the Property is not under a tax reduction program or any other classification that lessens or reduces the real estate tax obligations in any manner and that has caused or may cause an increase in present or future real estate taxes on the Property as a result of the tax savings or deferrals received in prior years.
- g) The City has not used the Property for the disposal of any hazardous or toxic waste materials.
- h) The City will not enter into any agreement, easement or covenant affecting the Property which will be binding on the Library or the Property after Closing without the prior written consent of the Library.

10. **Survivability:** The terms of this Agreement shall survive closing and the delivery of the Deed. This Agreement shall be binding upon and shall inure to the benefit of the City and the Library and their respective successors and assigns and successors in title.

11. **Condemnation:** If the Property becomes subject to any threatened or actual condemnation proceeding, the Library shall have the right to terminate this Agreement or to close and receive the condemnation award or settlement which shall be assigned to the Library or if received by the City prior to Closing delivered to the Library at Closing. The City shall immediately notify the Library of any notice or information it receives regarding any condemnation action.

12. **Casualty:** The City shall bear all risk of loss prior to Closing. In the event the Property is damaged by fire or other casualty prior to Closing, the Library may (a) terminate this Agreement upon written notice to the City and the parties shall have no further liabilities or obligations hereunder except as specifically set forth herein, or (b) proceed with Closing, whereupon the Library shall be entitled to insurance proceeds, if any, which are paid or payable to the City under all policies covering the Property as the result of such fire or other casualty. The City shall cooperate with the Library in notifying the Library of any such damage or destruction of the Property promptly after the City is aware of the same, and providing the Library with pertinent information related to the City's insurance policies and insurance proceeds, if any.

13. **Mediation:** In the event the City and Library have a dispute as to any of the terms of applicability of this Agreement, they agree to use their best efforts to resolve the dispute through a mutually acceptable mediation process prior to either filing a lawsuit. Each entity participating in mediation shall pay its own costs of mediation, including its proportionate share of the compensation and administrative expenses required by the mediator and by the mediation services provider selected by them. If a mediator has not been selected by the City and Library within sixty (60) days after one of them has requested that a dispute arising under this Agreement be mediated, or if the dispute has not been resolved within ninety (90) days after notice of the dispute has been provided to the other of them, then either may commence a lawsuit or commence such other method of pursuing such remedies as may be available to either of them.

14. **Time:** If the date by which any action is to be taken, any notice is to be given or any document or information is to be furnished pursuant to this Agreement is not a business day, then the time for the taking of such action, giving of such notice or furnishing of such document or information shall be automatically extended to the next subsequent business day. As used herein, "business day" shall mean any day other than a Saturday, Sunday or legal holiday.

15. **Notices:** Addresses for notice are as follows:

If to the City:

City of Avon
36080 Chester Road
Avon, Ohio 44011
Attn: Mayor
Phone: (440) 937-7800
Fax: (440) 937-7824
Email: contactmayor@cityofavon.com

With a copy to:

City of Avon
36080 Chester Road
Avon, Ohio 44011
Attn: Law Director
Phone: (440) 937-7676
Fax: (440) 937-7824
Email: jgasior@ssgavonlaw.com

If to the Library:

Lorain Public Library and Board of Library Trustees
351 W. 6th Street
Lorain, Ohio 44052
ATTN: Director
Phone: (440) 244-1192
Email: adiamond-ortiz@lpls.info

With a copy to:

Amy S. Bartemes, Esq.
Bricker & Eckler, LLP
100 S. Third St.
Columbus, OH 43215
Phone: 614-227-2379
Fax: 614-227-2390
Email: abartemes@bricker.com

All notices, demands, consents, statements, requests, or other communications hereunder, or required by law, shall be in writing, and shall be deemed properly delivered when and if (a) personally delivered, (b) sent by nationally recognized overnight courier service which in the ordinary course of its business maintains a record of receipt of each of its deliveries, (c) mailed, United States mail, postage prepaid, certified or registered mail, return receipt requested, or (d) delivered by electronic transmission (including electronic mail), when received, addressed to the parties hereto and other persons at their respective addresses set forth above or as they may hereafter specify by written notice delivered in accordance herewith.

Notices shall be deemed to have been given on the date of delivery or refusal of delivery or if delivery cannot be effected during normal business hours, if by hand upon delivery; on the date of record of receipt by the courier if deposited with any private courier service; or date of postmark if sent by United States mail.

A person receiving a notice which does not comply with the technical requirements for notice under this section may elect to waive any deficiencies and treat the notice as having been properly given.

16. **Brokers:** Each party represents to the other that it has not contracted with or entered into any agreement with any real estate broker or agent in connection with the sale of the Property, and it has not taken any action which might result in any other real estate brokers, finder or other commissions in connection with this transaction.

17. **Entire Agreement:** This Agreement constitutes the entire contract between the parties hereto and supersedes all prior understandings, if any, there being no other oral or written promises, conditions, representations, understandings or terms of any kind as conditions or inducements to the execution hereof and none have been relied upon by either party. Any subsequent conditions, representations, warranties, or agreements shall not be valid and binding upon the parties unless in writing and signed by both parties.

18. **Original Document:** This Agreement shall be executed by both parties in counterparts, each of which shall be deemed an original, but all such counterparts taken together shall constitute one and the same Agreement.

19. **Counterpart and Electronic Execution:** For purposes of executing this Agreement, a document signed and transmitted by facsimile machine or e-mail shall be treated as an original document. The signature of any party thereon shall be considered as an original signature, and the document transmitted shall be considered to have the same binding legal effect as an original signature on an original document. At the request of either party, any facsimile or e-mail document shall be re-executed by the other party in original form. No party hereto may raise the use of a facsimile machine or e-mail as a defense to the enforcement of this Agreement or any amendment executed in compliance with this Section. This Section does not supersede the requirements of the "Notices" Section.

20. **Governing Law:** This Agreement shall be construed, and the rights and obligations of the City and the Library hereunder shall be determined, in accordance with the laws of the State of Ohio.

21. **Non-Merger:** In addition to the specific language of non-merger found in certain sections of this Agreement, any provision hereof which by its terms would be performed after the Closing shall survive the Closing and shall not merge in the Closing or in the Deed, except as specifically provided to the contrary herein.

22. **Recitals.** The Recitals set forth at the beginning of this Agreement are incorporated into the Agreement as if fully rewritten herein.

23. **Effective Date:** The "Effective Date" of this Agreement shall be the date on which this Agreement is last signed by Library or the City, as indicated by the date under each signature on the following page. The Effective Date shall be the date inserted at the top of page 1 of this Agreement.

[signatures on following page]

In witness whereof, the undersigned have executed this Agreement as of the date(s) set forth below their respective signatures.

LIBRARY:

LORAIN PUBLIC LIBRARY:

By: _____

Garalyn Tomas
President, Board of Library Trustees

Date: _____

By: _____

Name: _____

Library Fiscal Officer, Board of Library
Trustees

Date: _____

CITY:

CITY OF AVON

By: _____

Bryan Jensen
Mayor, City of Avon

Date: _____

Approved as to Form:

By: _____

John Gasior
Director of Law

Date: _____

EXHIBIT A

Depiction of Property



FISCAL OFFICER'S CERTIFICATE

The undersigned Fiscal Officer of the Lorain Public Library hereby certifies in connection with the foregoing Real Estate Purchase Contract dated _____, 2021, that:

The amount required to meet the agreement, obligation, or expenditure for the attached contract has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of the general fund or other appropriate fund, free from any outstanding obligation or encumbrance.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2021.

LORAIN PUBLIC LIBRARY

_____, Fiscal Officer