

ORDINANCE NO. 2010-38

INTRODUCED BY: Mayor Rinker and Council as a Whole

**AN EMERGENCY ORDINANCE AUTHORIZING AND
DIRECTING THE MAYOR AND PRESIDENT OF COUNCIL TO
ENTER INTO AN AGREEMENT
WITH THE BOARD OF TRUSTEES OF THE CUYAHOGA
COUNTY PUBLIC LIBRARY.**

WHEREAS, the Board of Trustees of the Cuyahoga County Public Library, (“Board of Trustees”) has reviewed sites for the construction of new library facilities in Cuyahoga County in furtherance of its mission to be at the center of community life by providing an environment where reading, lifelong learning and civic engagement thrive; and

WHEREAS, the Board of Trustees wishes to accept a five (5) acre parcel located on SOM Center Road north of Highland Road and all appurtenances, hereditaments, rights, privileges and easements belonging or in any way appertaining thereto; (the “Property”), and the Village wishes to donate the Property to the Board of Trustees to spur economic development and community development on the Property and economic stimulus in the Village in furtherance of its mission; and

WHEREAS, the Board of Trustees will construct and operate an approximately 30,000 square foot library building (the “Facility”) upon the Property and commits to working with the Village on incorporating the Property into the Village Greenway Corridor Master Plan; and

WHEREAS, the Village wishes to accept two (2) residential properties from the Board of Trustees located at 6120 and 6128 Wilson Mills Road, Mayfield, Ohio (the “Residential Property”) and the Board of Trustees wishes to convey the Residential Property to the Village; and

WHEREAS, in order to memorialize the terms of the Agreement, the Village deems it in its best interest to enter into a Real Estate Purchase Agreement with the Board of Trustees.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF MAYFIELD VILLAGE, OHIO, THAT:

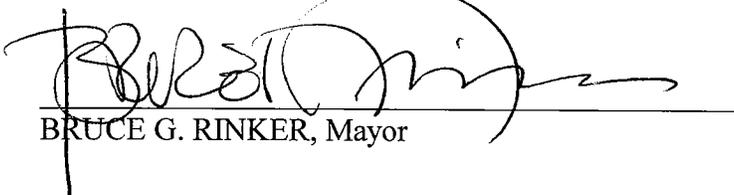
SECTION 1. That the Mayor and President of Council are hereby and herein authorized and directed to enter into a Real Estate Purchase Agreement with the Board of Trustees in a form substantially similar to that attached hereto and incorporated herein by reference as Exhibit “A”.

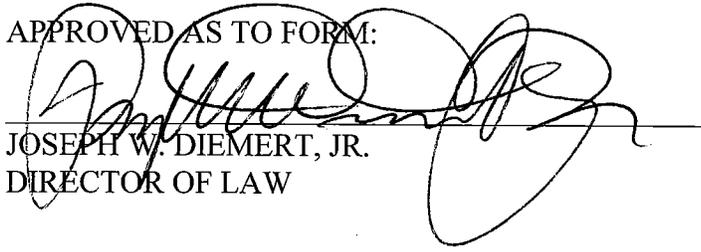
SECTION 2. The Council finds and determines that all formal actions of this Council relating to the adoption of this Ordinance have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

SECTION 3. This Ordinance is hereby declared to be an emergency measure immediately necessary for the health, safety and welfare of the residents of Mayfield Village, Ohio. It shall, therefore, take effect immediately upon the passage by the affirmative vote of not less than five (5) members elected to Council and approval by the Mayor or otherwise at the earliest time allowed by law.


WILLIAM BUCKHOLTZ
Council President

First Reading: September 20, 2010
Second Reading: Suspended 2010
Third Reading: Suspended 2010
PASSED: September 20,, 2010


BRUCE G. RINKER, Mayor

APPROVED AS TO FORM:

JOSEPH W. DIEMERT, JR.
DIRECTOR OF LAW

ATTEST: 
MARY E. BETSA,
Clerk of Council

CUYAHOGA COUNTY PUBLIC LIBRARY

RESOLUTION TO APPROVE REAL ESTATE PURCHASE AGREEMENT WITH MAYFIELD VILLAGE, OHIO

WHEREAS, the Cuyahoga County Public Library (the “Library”) Board of Trustees recognizes the need to continue to ensure excellence in the provision of library services to the residents of Cuyahoga County; and

WHEREAS, the Library has identified certain real property containing approximately 5.00 acres located on SOM Center Road, north of Highland Road (the “Site”) in Mayfield Village, Ohio (the “City”), which real property is currently owned by the City, as real property which would be advantageous for construction of a new library facility to serve the residents of Cuyahoga County; and

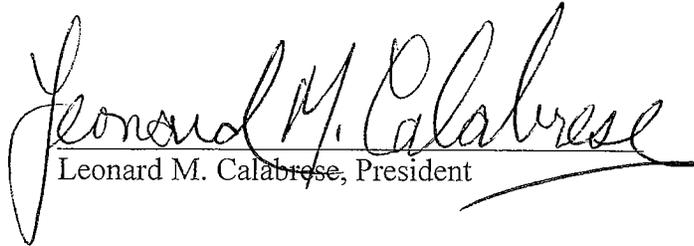
WHEREAS, the City has proposed incorporating the Site and surrounding land into a multi-use development, including recreational and other uses, to benefit the City’s residents; and

WHEREAS, the Library and the City desire to enter into the attached Real Estate Purchase Agreement (the “Agreement”), which provides the terms and conditions under which the City will (a) construct an access road from SOM Center Road to the Site (the “Access Road”), (b) ensure that utilities are available to the Site, (c) ensure that the zoning of the Site is compatible with the construction and operation of the Facility, and (d) install a traffic signal at the intersection of the Access Road and SOM Center Road, all at the City’s sole cost and expense; and

WHEREAS, after a due diligence period, the Library shall purchase the Site from the City for the consideration of \$1.00 and the donation of two (2) residential properties located at 6120 and 6128 Wilson Mills Road, Mayfield Village, Ohio, and construct a new facility thereon (the “Facility”) at the Library’s sole cost and within the time period prescribed by the Agreement, subject to the terms and conditions of the Agreement.

NOW THEREFORE BE IT RESOLVED, that the Board of Trustees approves the attached Real Estate Purchase Agreement with Mayfield Village, Ohio.

APPROVED September 28, 2010:


Leonard M. Calabrese, President


Sanjiv K. Kapur, Secretary

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (this "Agreement") is made and entered into this 28th day of September, 2010, (the "Effective Date") by and between the **THE BOARD OF TRUSTEES OF THE CUYAHOGA COUNTY PUBLIC LIBRARY** ("Buyer" or "Library") and **MAYFIELD VILLAGE**, an Ohio municipal corporation ("Seller" or "Village"). Buyer and Seller may be referred to hereafter collectively as the "Parties" or individually as a "Party".

RECITALS:

A. Buyer's Board of Trustees has reviewed sites for the construction of new library facilities in Cuyahoga County in furtherance of its mission to be at the center of community life by providing an environment where reading, lifelong learning and civic engagement thrive.

B. Buyer wishes to acquire a five (5) acre parcel located on SOM Center Road north of Highland Road and all appurtenances, hereditaments, rights, privileges and easements belonging or in any way appertaining thereto; such land is depicted on **Exhibit A**, attached hereto and by this reference made a part hereof (the "Property"), and Seller wishes to donate the Property to Buyer to spur economic development and community development on the Property and economic stimulus in the Village.

C. Buyer will construct and operate an approximately 30,000 square foot library building (the "Facility") upon the Property, and commits to working with the Village on incorporating the Property into the Village Greenway Corridor Master Plan.

D. Seller wishes to acquire two (2) residential properties from Buyer located at 6120 and 6128 Wilson Mills Road, Mayfield Village, Ohio (the "Residential Property") and Buyer wishes to convey the Residential Property to Seller.

WITNESSETH:

For and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the adequacy, sufficiency, and receipt of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereto agree as follows:

1. Agreement to Donate. Seller shall donate, convey and assign to Buyer, and Buyer shall take and accept from Seller all of Seller's right, title, and interest in and to the Property. Buyer shall convey, and Seller shall acquire, take and accept from Buyer all of Buyer's right, title and interest in and to the Residential Property.

2. Purchase Price. The consideration for the Property shall be the conveyance of the Residential Property to Seller, and One Dollar (\$1.00) (the "Purchase Price") payable in the form of immediately available funds to Escrow Agent (as defined below), on the Closing Date (as defined in Section 7).

3. Title Commitment; Title Policy and Survey.(a) _____ ("Escrow Agent") as title agent for _____ ("Title Company") shall serve as Escrow Agent, subject to Escrow Agent's standard conditions for the acceptance of escrow, except as otherwise expressly provided herein.

(b) The "Inspection Period" shall commence upon execution of this Agreement by the Parties and shall terminate upon Closing (as defined in Section 7).

(c) During the Inspection Period, Buyer shall obtain a commitment from Title Company for owner's title insurance in an amount satisfactory to Buyer (the "Title Commitment"), showing that Seller has good and marketable fee simple title to the Property, free and clear of all liens and encumbrances except: (i) those specifically set forth in this Agreement; (ii) zoning and building laws, ordinances and regulations; (iii) legal streets and highways; and (iv) easements, conditions and restrictions of record, if any, that will not interfere with Buyer's intended use to construct and operate the Facility on the Property (collectively, the "Permitted Exceptions"). The Title Commitment shall include the results of a special tax search and examination for any financing statements filed of record which affect the Property.

Within fifteen days (15) days of Buyer's receipt of the Title Commitment, Buyer shall review the Title Commitment and if the Title Commitment reveals any matter which materially affects the marketability of the Property, Buyer shall give Seller written notice thereof and, Seller may, within ten (10) days, remedy or remove any such matter or, if Buyer agrees in its discretion, Buyer may accept the Title Commitment. If Seller is unable or unwilling to remedy or remove the objectionable matter during said 10 day period, Buyer shall have the option of either (i) terminating this Agreement in which event all funds and documents previously paid, deposited or advanced by Buyer shall be immediately returned to Buyer, both Parties shall thereafter be released from all further obligations under this Agreement and neither Party shall have any further liability to the other Party hereto, or (ii) taking title to the Property subject to said matter. If the matter is one which can be removed by the payment of a fixed or ascertainable payment of money (such as a tax lien or certificate of judgment), Seller may elect to pay such amount at or before Closing as is necessary to remove such matter to permit the Closing

Up to the Closing Date, Buyer may request updates to the Title Commitment which must disclose no change in the state of the title to the Property (if any change is so disclosed, Buyer shall have all of the rights set forth in the immediately following paragraph in this Section to the extent that Buyer deems any of such changes objectionable).

Buyer shall cause Title Company to issue to Buyer, on or within ten days of Closing, a 2006 ALTA Owner's Policy of Title Insurance (the "Title Policy") for the Property in an amount solely determined by Buyer, insuring good and marketable title, subject only to the Permitted Exceptions, with the standard printed exceptions deleted, and with such endorsements as Buyer

may request in its sole discretion. Seller shall provide an affidavit or otherwise satisfy the requirements of Title Company relating to the deletion of the so-called "standard printed exceptions".

(d) During the Inspection Period, Buyer shall have the right to obtain, at Buyer's sole cost and expense, a survey drawing and legal description of the Property prepared by a surveyor registered and licensed in Ohio (the "Survey"). The Survey shall be an ALTA/ACSM land title survey prepared in accordance with "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys", which shall include such Table A items as specified by Buyer, and shall be certified to Buyer, Title Company, and any other person Buyer may designate. The legal description set forth in the Survey shall be attached to the Deed (as defined in Section 7) as an exhibit.

Upon Buyer's receipt of such Survey:

- i. Buyer shall review the Survey in conjunction with the Title Commitment and shall notify Seller in writing within thirty (30) days of receipt of the Survey of any objection(s) thereto (the "Survey Objections").
- ii. Seller shall have the right but not the obligation to cure the Survey Objections within ten (10) days after Seller's receipt of Buyer's notice. If the Survey Objections are not cured, Buyer shall have the option to (i) accept the Property subject to the Survey Objections, or (ii) terminate this Agreement by giving written notice to Seller of such termination, in which event all funds and documents previously paid, deposited or advanced by Buyer shall be immediately returned to Buyer, both Parties shall thereafter be released from all further obligations under this Agreement and neither Party shall have any further liability to the other Party hereto.
- iii. The failure of Buyer to notify Seller of objection(s) to the Survey within the time period set forth in subsection (d)i, above, shall constitute an acceptance thereof by Buyer.

(e) During the Inspection Period, Seller may review the condition of the Residential Property, including but not limited to the review of a title commitment and survey, all obtained and reviewed by Seller, at Seller's sole cost and expense.

4. Inspection of the Property and the Residential Property.

(a) During the Inspection Period, Buyer and its authorized representatives shall have the right to enter upon the Property following the execution of this Agreement to make test borings, drainage tests, surveys, engineering and architectural studies, inspections of well and septic systems and for other purposes commensurate with ascertaining the suitability of the Property for Buyer's purposes, including for the purpose of conducting a Phase I and/or Phase II environmental audit of the Property (the "Environmental Audit"). Buyer agrees to pay the total cost of the Environmental Audit. Seller shall cooperate with Buyer and its authorized representatives in providing information and access to the Property necessary to complete the Environmental Audit. Buyer agrees to be responsible for any and all damages to the Property or

to others incurred as a result of its inspection and to defend, indemnify and hold Seller harmless from the same.

(b) Seller shall provide Buyer with the following which are in Seller's possession: (i) copies or written summaries in the event of verbal contracts of all environmental audits or studies, reports of soil borings tests, inspection reports prepared by any structural or mechanical engineer, or any other documents related to the environmental condition of the Property; (ii) copies of all licenses, permits, authorizations or approvals; and (iii) copies of the most recent title insurance policies relative to the Property.

(c) Buyer shall have the right, if the foregoing inspection or documents, reveals a condition or state of facts which in Buyer's reasonable opinion would materially interfere with Buyer's intended use of the Property, to terminate this Agreement by written notice to Seller and Escrow Agent at any time during the Inspection Period. Upon receipt of such notice, all Parties shall be released from their obligations hereunder and Buyer shall deliver to Seller the originals and all copies of the items delivered to Buyer by Seller during the Inspection Period including, without limitation, those items described in subsection 4(b) and all reports prepared pursuant to subsection 4(a).

(d) During the Inspection Period, Seller, and its authorized representatives shall have the right to enter the Residential Property and inspect same. Seller agrees to pay the total cost of any inspections of the Residential Property. Buyer shall cooperate with Seller and its authorized representatives in providing information and access to the Residential Property necessary to complete any inspections. Seller agrees to be responsible for any and all damages to the Residential Property or to others incurred as a result of its inspection and to defend, indemnify and hold Buyer harmless from the same. Seller shall have the right, if the foregoing inspection or documents, reveals a condition or state of facts which in Seller's reasonable opinion would materially interfere with Seller's intended use of the Residential Property, to eliminate the conveyance of the Residential Property from the operation of this Agreement by delivering written notice to Buyer and Escrow Agent at any time during the Inspection Period. Upon receipt of such notice, all Parties shall be released from their obligations hereunder with respect to the Residential Property and Seller shall deliver to Buyer the originals and all copies of the items delivered to Seller by Buyer during the Inspection Period.

5. Seller's Obligations.(a) Seller shall provide, at Seller's sole cost and expense, to the satisfaction of Buyer:

- i. Confirmation that utilities are available to the Property and are found in the standard right of way.
- ii. An access road from SOM Center Road to the Property as outlined on **Exhibit A** attached hereto (the "Access Road"), at a location acceptable to Buyer.
- iii. A traffic signal at the intersection of the Access Road and SOM Center Road in accordance with and subject to the requirements of the Ohio Manual of Uniform Traffic Control Devices.

(b) Seller shall cooperate with Buyer in obtaining the necessary approvals and permits in order to construct the Facility.

6. Buyer's Obligations.(a) Buyer shall commence construction of the Facility after Closing and after all Preconditions to Construction (as defined in Section 9) have been satisfied. The Parties contemplate that the Facility will include space for collections of current books, DVDs, CDs and other materials for circulation; public computers; high speed internet access available to the public; meeting room(s) and quiet study space; and an early childhood play, learn and grow area and welcoming space for teens. The Facility will serve as a community gathering space and provide a comfortable and welcoming environment with resources, programs and services for all. In this regard, Buyer commits to working and coordinating with Seller on incorporating the Property into the Village's Greenway Corridor Master Plan to promote pedestrian and bicycle access to the Facility.

(b) Buyer shall pay, or cause to be paid through public and private funds, the costs related to the development, construction and operation of the Facility.

(c) Prior to the Closing, Buyer shall provide a tentative construction schedule to Seller, which may be subject to change (the "Schedule"). Buyer shall provide an updated Schedule to Seller upon the pouring of foundations for any portion of the Facility ("Commencement of Construction").

(d) Buyer shall use its best efforts to complete construction of the Facility in accordance with the Schedule, as updated.

(e) Buyer shall deliver a title commitment for the Residential Property to Seller.

7. Closing. The transfer of the Property shall close five (5) days after the Preconditions to Closing (as defined below) have been satisfied as determined by Buyer and Seller (the "Closing Date" or "Closing"). Buyer shall notify Escrow Agent that the Preconditions have been satisfied. The Parties may agree in writing to change the Closing Date. Seller shall execute and deliver the following items to the Escrow Agent no later than one (1) day prior to the Closing Date: (i) a limited warranty deed (the "Deed"); (ii) a recordable satisfaction and release of any liens on the Property which are not Permitted Exceptions; (iii) such affidavits and indemnities as are reasonably requested by the Title Company in order to delete the standard printed exceptions and otherwise enable the Title Policy to be issued; and (iv) an ordinance authorizing Seller to enter into this Agreement and to consummate the transactions contemplated hereunder. The Deed shall contain a reversionary clause whereby title to the Property and the Facility, if constructed, will revert to Seller if (i) Buyer fails to construct the Facility by _____; or (ii) after construction of the Facility, Buyer fails to provide the services, equipment, materials, and programming, as set forth in Section 6 of this Agreement or comparable services, equipment, materials and programming reflective of the standards of the public library industry situated in metropolitan areas of like size in Buyer's reasonable discretion; or (iii) Buyer fails to provide the services offered at the Facility to the general public for no charge in accordance with the Ohio Revised Code, as the same may be amended from time to time, which currently provides that such services must be offered free of charge to the general public. Buyer shall execute and deliver the following items to Escrow Agent no later

than one (1) day prior to the Closing Date: (i) a limited warranty deed conveying the Residential Property to Seller; and (ii) such affidavits and indemnities as are reasonably requested by the Title Company in connection with the conveyance of the Residential Property.

This Agreement shall serve as joint escrow instructions to Escrow Agent. Escrow Agent may attach its standard terms which shall govern insofar as they do not conflict herewith.

The Escrow Agent shall close the transaction by:

- i. Filing the deed(s) for record;
- ii. Charging the Parties for prorations and costs as provided herein; and
- iii. Disbursing the funds and delivering the documents (or recorder's receipt) deposited with it as provided herein.

Escrow Agent shall charge the following costs and expenses to Buyer on the Closing Date (the "Closing Costs"): (i) the premium to issue the Title Policy; (ii) the cost of the Survey, if any; (iii) the fees for filing the Deed for the Property; (iv) the cost of the real estate transfer tax or conveyance fee; (v) the cost of the title examination for the Property and the fee for issuance of the Title Commitment; and (vi) the escrow fee. Buyer shall deposit any amounts needed to satisfy the Closing Costs with Escrow Agent on or prior to the Closing Date. Escrow Agent shall charge the following costs and expenses to Seller on the Closing Date (the "Seller Closing Costs"): (i) the cost of any title commitment or any title policy for the Residential Property; (ii) the cost of any survey for the Residential Property; and (iii) the fees for filing the deed for the Residential Property. Seller shall deposit any amounts needed to satisfy the Seller Closing Costs with Escrow Agent on or prior to the Closing Date.

8. Preconditions to Closing. All of Buyer's obligations to Closing are conditioned on the following (the "Preconditions to Closing"):

- (a) Satisfaction of the title and survey conditions as set forth in Section 3;
- (b) Satisfaction of the inspection conditions as set forth in Section 4;
- (c) The representations and warranties of Seller set forth in this Agreement shall be true and correct on the Closing Date;
- (d) Passage of an ordinance by Mayfield Village Council ("Village Council") authorizing the transaction contemplated by this Agreement;
- (e) Passage of a resolution by the Board of Trustees of Buyer authorizing the transactions contemplated by this Agreement; and
- (f) Approval by Seller, and the filing by Seller, if necessary, at Seller's sole cost and expense, of a lot split consolidation plat, reviewed and approved by Buyer, with the Cuyahoga County Recorder to designate the Property as a separate tax parcel.

(g) Seller's approval, by and through its various commissions, committees and boards, of Buyer's preliminary and final site plan.

(h) Satisfaction that all State and Federal approvals and permits have been obtained.

Unless the Preconditions to Closing are satisfied or have been waived in writing by Buyer no later than _____, this Agreement shall terminate upon written notice by Buyer to Seller and Escrow Agent, and following such notice, neither Party shall have any further liability to the other, except that all documents shall forthwith be returned to Buyer or Seller, as the case may be.

9. Preconditions to Construction of Facility.

The following are the preconditions to the commencement of construction of the Facility by Buyer (collectively, the "Preconditions to Construction"):

- (a) Seller, in cooperation with Buyer, shall ensure that the Property is zoned in compliance with the construction and operation of the Facility;
- (b) the adoption of zoning which permits the construction of the Facility;
- (c) approval of the Project by the Village building department;
- (d) the Project being publicly bid; and
- (e) the Project bids are accepted by Library's Board of Trustees.

10. Seller's Representations and Warranties. Seller represents, warrants and agrees that:

(a) It is a municipal corporation in full force and effect under the Constitution and laws of the State of Ohio.

(b) This Agreement is a valid and binding instrument enforceable against Village in accordance with its terms.

(c) To the best of Seller's knowledge it is not in violation of or in conflict with any provision of the laws of the State of Ohio which would impair its ability to observe and perform its covenants, agreements and obligations under this Agreement.

(d) Seller has and will have full power and authority (i) to execute, deliver, observe and perform this Agreement, and (ii) to enter into, observe and perform the transactions contemplated in this Agreement.

(e) Prior to Closing, Seller will be the sole owner of the Property, free and clear of all liens, claims, encumbrances, restrictive environmental covenants (including any institutional controls or restrictions on the use of the Property), and rights of others except for the Permitted Exceptions, and will convey same to Buyer subject only to the Permitted Exceptions. No party is

in possession of the Property or any portion thereof, whether as a lessee or tenant at sufferance. There is no option to purchase, right of first refusal to purchase or agreement for the sale and purchase of the Property or any portion thereof to any person or entity, except for this Agreement.

(f) There is no action, suit, investigation, or proceeding pending, or to the knowledge of Seller, threatened against the Property or any portion thereof, in any court or by any federal, state, county or municipal department, commission, board, agency, or other governmental instrumentality.

(g) No unpaid improvements which might ripen into and form the basis of a mechanics' lien have been or will be made to the Property prior to the Closing Date.

All representations and warranties of Seller shall survive the execution and delivery of this Agreement.

11. Buyer Representations and Warranties.

Buyer represents, warrants and agrees that:

(a) Buyer is a political subdivision in full force and effect under the Constitution and laws of the State of Ohio.

(b) This Agreement will be a valid and binding instrument enforceable against Buyer in accordance with its terms.

(c) Buyer is not in violation of or in conflict with any provision of the laws of the State of Ohio which would impair its ability to observe and perform its covenants, agreements and obligations under this Agreement.

(d) Buyer has and will have full power and authority (i) to execute, deliver, observe and perform this Agreement, and (ii) to enter into, observe and perform the transactions contemplated in this Agreement.

(e) Buyer is the sole owner of the Residential Property, free and clear of all liens, claims, encumbrances, restrictive environmental covenants (including any institutional controls or restrictions on the use of the Residential Property). Tenant's are occupying the Residential Property on a month to month basis. There is no option to purchase, right of first refusal to purchase or agreement for the sale and purchase of the Residential Property or any portion thereof to any person or entity, except for this Agreement.

(f) There is no action, suit, investigation, or proceeding pending, or to the knowledge of Seller, threatened against the Residential Property or any portion thereof, in any court or by any federal, state, county or municipal department, commission, board, agency, or other governmental instrumentality.

(g) No unpaid improvements which might ripen into and form the basis of a mechanics' lien have been or will be made to the Residential Property prior to the Closing Date.

All representations and warranties of Buyer shall survive the execution and delivery of this Agreement.

12. Events of Default; Remedies.

(a) Except as otherwise provided in this Agreement, in the event of breach of any terms or conditions of this Agreement by any Party, such Party shall, upon written notice from the other Party, proceed promptly to cure or remedy such breach, and, in any event, shall accomplish such cure or remedy within thirty days after receipt of such notice (or if such default is other than payment of money and is not amendable to cure within 30 days, shall commence to cure the default within 30 days and thereafter diligently continue such cure to completion), unless such default is one that would harm the non-defaulting Party if the defaulting Party were allowed 30 days to cure. In case such action is not taken within such time or in such manner, or the default or breach shall not be cured or remedied within such time, then the Party asserting breach may institute such proceedings at law or in equity as may be necessary or desirable in its opinion to remedy such breach.

(b) Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided, or any other remedies provided by law or equity, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any damages accruing to a Party by reason of the violation of any of the other Party's obligations hereunder. Forbearance by a party to enforce one or more of the remedies herein provided upon the occurrence of an event of default shall not be construed to constitute a waiver of such default.

(c) Notwithstanding any other provisions in this Section 12, in the event Buyer fails to construct the Facility by _____, Seller's sole remedies shall be the reversion of the Property from Buyer to Seller as provided in Section 7.

(d) Except as otherwise provided herein, neither Party shall be considered in default of its obligations to be performed hereunder, if delay in the performance of such obligations is due to unforeseeable causes beyond its control and without its fault, including but not limited to, acts of God or of the public enemy, acts of terrorism, acts of the Federal or state government, acts or delays of the other Party, fires, floods, unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes, or delays of contractors, subcontractors or materialmen due to any of such causes; but not including lack of financing or financial capacity by Village or Library ("Force Majeure"), it being the purpose and intent of this paragraph that in the event of the occurrence of any such delay, the time or times for performance of such obligations shall be extended for the period of the delay; provided, however, that the Party seeking the benefit of the provisions of this paragraph shall within 14 days after the beginning of such delay, notify the other Party in writing thereof and of the cause thereof and of the duration thereof, or, if a continuing delay and cause, the estimated duration thereof, and if the delay is continuing on the date of notification, within 30 days after the end of the delay, notify the other Party in writing of the duration of the delay.

13. Hike and Bike Trail.

Seller and Buyer both acknowledge that the Village has adopted a Greenway Corridor Master Plan that sets out in detail a Hike and Bike Trail throughout the Village including the Property and contiguous and adjacent properties. Seller and Buyer agree to cooperate to facilitate access to the new library in coordination with the Greenway Corridor Master Plan.

14. Miscellaneous.

(a) No Personal Liability.No covenant, obligation or agreement of any Party contained in this Agreement shall be deemed to be a covenant, obligation or agreement of any present or future officer or employee of Seller or Buyer. No officer or employee of either Seller or Buyer, including, but not limited to, the members of the Village Council of Village, any Village official, the members of the Board of Trustees of Library or any Library employee, shall be liable personally by reason of the covenants, obligations or agreements of either Seller or Buyer contained in this Agreement.

(b) Notices.All notices, requests, demands and other communications between the Parties required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and (i) deposited in the United States Mail by registered or certified mail, postage pre-paid, or (ii) sent by any nationally recognized courier delivery service, and addressed as follows:

If to Seller:

Mayor of Mayfield Village
Office of the Mayor
6622 Wilson Mills Road
Mayfield Village, Ohio 44143

If to Library:

Cuyahoga County Public Library
2111 Snow Road
Parma, Ohio 44134
Attn: Facilities Director

(c) Entire Agreement.All negotiations, representations and understandings between the Parties as to the subject of this Agreement are incorporated herein and may be modified or altered only by an agreement in writing signed by the Parties.

(d) Captions.The captions and headings in the Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement and are in no way to be construed as a part of this Agreement.

(e) Governing Law.This Agreement shall be governed exclusively by, and construed in accordance with, the laws of the State of Ohio.

(f) Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Seller, Buyer and their respective successors and assigns.

(g) Severability. If any provision in this Agreement or any portion thereof shall be invalid or unenforceable for any reason, such invalidity or lack of enforceability shall not affect the validity or enforceability of any provision or portion thereof.

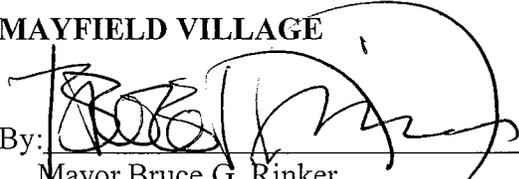
(h) Time of Essence. Time is of the essence in the performance of each of the duties and obligations of the Parties hereunder.

(i) Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement.

[SIGNATURE PAGES FOLLOW]

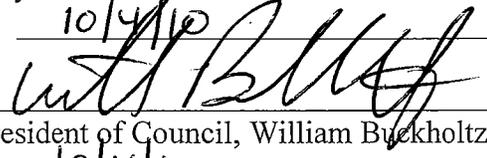
IN WITNESS WHEREOF, Village and Library have caused this Agreement to be executed as of the Effective Date.

MAYFIELD VILLAGE

By: 

Mayor Bruce G. Rinker

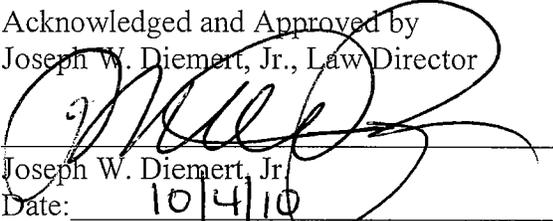
Date: 10/4/10

By: 

President of Council, William Buckholtz

Date: 10/4/10

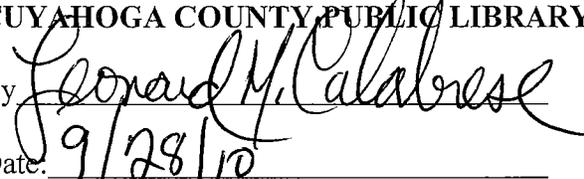
Acknowledged and Approved by
Joseph W. Diemert, Jr., Law Director



Joseph W. Diemert, Jr.

Date: 10/4/10

**THE BOARD OF TRUSTEES OF THE
CUYAHOGA COUNTY PUBLIC LIBRARY**

By: 

Date: 9/28/10

By: 

Name: _____

Its: _____

Date: _____

Exhibit A

Depiction of Property

