

LEGISLATIVE

120681B

**GROUND LEASE AGREEMENT FOR PERMANENT PUBLIC LIBRARY
AT CONE PARK**

THIS GROUND LEASE AGREEMENT ("**Lease**") is made effective on _____, (the "**Commencement Date**" or "**Effective Date**") by and between the **CITY OF GAINESVILLE**, a Florida municipal corporation ("**Lessor**"), and **ALACHUA COUNTY LIBRARY DISTRICT, an Independent Special District** ("**Lessee**").

WHEREAS, Lessor and Lessee have entered into a Ground Lease for a modular building located on a portion of the Fred Cone Park owned by the Lessor ("**Cone Park**") which serves as a temporary branch library;

WHEREAS, since the installation of the temporary branch library, the parties have continued to work cooperatively toward the goal of locating a permanent branch library at Cone Park;

WHEREAS, Lessee now desires to move forward with construction of the permanent public library; and

NOW THEREFORE, in consideration of \$1.00, paid by Lessee to Lessor, receipt of which is hereby acknowledged, and in consideration of the mutual covenants and conditions herein contained, it is agreed by the parties as follows:

1. **Leased Premises**: The Lessor does hereby grant a ground lease to the Lessee of the real property depicted in the sketch, attached hereto as **Exhibit "A"** (the "**Leased Premises**"). Lessor shall prepare a legal description of the Leased Premises within 30 days of Lessee obtaining final development plan approval and the parties shall amend this Lease to include the legal description.
2. **Term**. The term of this Lease shall be for fifty (50) consecutive years commencing on the Commencement Date ("**Initial Term**"). Upon expiration, the Lease shall be renewed automatically on the same terms and conditions as set forth in this Lease for a period of ten (10) years (the "**Renewal Term**"), unless (i) Lessee is in default beyond applicable notice and cure periods on the date the Renewal Term commences, or (ii) Lessee notifies Lessor of Lessee's intention not to renew the Lease at least ninety (90) days prior to the expiration of the Initial Term. As used in this Lease, "**Term**" shall mean the Initial Term and the Renewal Term. Beyond, the Initial Term and Renewal Term, this Lease may renewed and extended by mutual written agreement of the Lessor and Lessee.
3. **Memorandum of Lease**. The parties agree that a Memorandum of Lease in the form attached hereto as **Exhibit "B"** shall be executed by the parties and recorded by Lessee, at Lessee's cost and expense, within thirty (30) days of execution of this Lease by both parties.
4. **Rent; Taxes**. Commencing on the first day of the Term, Lessee shall pay to

Lessor the amount of rent ("**Rent**") provided in the Rent Schedule attached hereto as **Exhibit "C"**, plus any applicable Federal, State, County or local sales or use tax or other tax on rents. Rent shall be payable in advance on or before the first (1st) day of each calendar month, without any notice, demand, or offset, and shall be remitted to the address stated in **Exhibit "C"**, or such other address as Lessor may direct by notice in writing to Lessee. It shall be the sole responsibility of the Lessor to remit the Lessee's payment of any applicable Federal, State, County or local sales, or use tax or other tax on rents to the appropriate taxing authority. If the Commencement Date, or the date of termination (the "**Termination Date**"), of this Lease is other than the first (1st) day of a calendar month, the first and last month rent shall be prorated.

In the event any installment of any the rent owed by Lessee is not paid when due, Lessee shall pay a late charge equal to ten percent (10%) of the amount due. The parties agree that such charge is a fair and reasonable estimate of Lessor's administrative and other expense incurred on account of late payment. Should Lessee make a partial payment of past due amounts, the amount of such partial payment shall be applied first to reduce all accrued and unpaid late charges and then to reduce all other past due amounts. In addition, late payments of rent shall bear interest from the date due at a rate of twelve percent (12%) or the highest rate then permitted by law, whichever is less.

In the event that any tax or assessment, whether ad valorem or otherwise, is levied as a result of or on the basis of this Lease against the Leased Premises or on other improvements placed thereon by Lessee, or upon any estate hereby created, Lessee covenants and agrees to promptly pay and discharge said taxes. It is agreed that Lessee shall assume and be responsible for the payment of such taxes and assessments, if any, for the year in which this Lease is executed, and thereafter, during the term of this Lease. Payment of said taxes or assessments shall be in addition to the rent payment provided for in this Lease. Lessee shall pay directly to the collecting authority such taxes and/or assessments within thirty (30) days of receipt of a bill for said taxes or assessments.

In the event that a tax assessment is levied on a portion of Cone Park outside of the Leased Premises, as a result of this Lease, then Lessee will assist Lessor in challenging the assessment.

5. **Use.** The use of the Leased Premises by Lessee is limited solely to the construction and operation of a permanent public library ("**Lessee's Use**" or "**Library**"). The Leased Premises shall at all times be considered a part of those certain lands known as Fred Cone Park and the use of the Leased Premises, as well as all persons entering thereon or therein, whether as an employee, agent, guest, or invitee of the Lessee, shall be subject to all applicable laws, statutes, ordinances, orders, rules and regulations of Federal, State, county and municipal authorities, and of any departments or divisions thereof, and of the applicable regulations of the Lessor. Lessee shall not make nor suffer any unlawful, improper or offensive use of the Leased Premises or any use or occupancy thereof.

6. **Improvements.**

A. **By Lessor.** The Lessor has planned and constructed park improvements and infrastructure, including but not limited to, parking, lighting and

utilities. Some of this infrastructure is available to serve the Library and therefore, the Lessee has agreed to contribute \$149,000 towards such infrastructure. The Lessee shall make payment to the Lessor within 15 days of approval of the Lease by both parties.

B. By Lessee. The Lessee shall, at its sole expense, construct a permanent library building and all improvements, such as utilities, necessary and required for Lessee's Use (the "**Improvements**"). The Lessee shall, at its sole expense, obtain all permits and approvals required by the City, and any other applicable regulatory agency, to construct and operate the Library on the Leased Premises. Lessee shall cause the Improvements and any subsequent improvements or alterations to the Leased Premises to be constructed in accordance with applicable laws. Construction of the Improvements shall be commenced and completed (as evidenced by issuance of a certificate of occupancy) within 3 years of the Commencement Date of this Lease. If the construction has commenced, but is not completed, Lessee may request an extension of time, not to exceed two years, for good cause shown. Upon finding good cause shown, Lessor may grant the extension. Failure to meet the construction deadline (as extended, if applicable) shall be a default under this Lease.

(1) Lessee may make such alterations, improvements, and changes to any Improvements that may from time to time be on the Leased Premises as the Lessee may deem necessary, provided Lessee first obtains Lessor's prior written approval for any exterior alterations, improvements or changes. The parties agree that the Lessor maintains final approval over all architectural designs, improvements or alterations to the exterior. In the event of damage to or destruction of the Premises, Lessee may rebuild or replace improvements to the design before the damage or destruction, without Lessor's approval, in accordance with existing law.

(2) Lessee shall promptly pay for all labor and materials used in constructing any improvements, alterations or fixtures on the Premises and shall do all things necessary to prevent the filing of any mechanics', materialman, or other type of lien or claim against Lessor or the Leased Premises by, against, through, or under Lessee or its contractors. Lessee shall notify its contractors that Lessor's interest shall not be subject to any liens or shall not be subject to any liens or claims for alterations, improvements or fixtures to the Leased Premises by Lessee. If any such lien or claim is filed, Lessee shall cause the same to be discharged within twenty (20) calendar days of the filing of the lien.

(3) Lessee's contractor performing any work hereunder shall obtain payment and performance bonds (or public construction bonds) in face amounts of 100% of the value of the work. All bonds shall inure to the benefit of the Lessor.

(4) Lessee shall require any and all contractor(s) performing work on the Leased Premises to obtain, prior to commencement of construction of

any improvements made to or on the Leased Premises by or on behalf of the Lessee, the following:

- a. Workers' Compensation Insurance for all persons engaged in said construction.
- b. Public Liability and Property Damage Insurance for the duration of said construction, to protect contractor and all of its approved construction sub-contractors from claims for damages for personal injury and accidental death and to property.
- c. All insurance required under this section shall be in the amount of One Million (\$1,000,000.00) Dollars for each occurrence and One Million (\$1,000,000.00) Dollars in aggregate or the limits of liability required by law, whichever is greater. All such insurance must be obtained through an insurance company authorized to do business in the State of Florida with an A.M. Best Rating of no less than A, and certificates of such insurance shall be filed with Lessor prior to commencement of such construction. Lessor shall be named as additional insureds with respect to such insurance and shall be given no less than thirty (30) days written notice of any amendment or cancellation thereof.

7. **Lessor acting in Proprietary Capacity.** The parties recognize that the Lessor is entering this Lease in its proprietary capacity, as owner of the Leased Premises, and not in its regulatory capacity. The parties agree that nothing contained in this Lease shall be interpreted or construed as an approval, waiver or contract to approve or waive any permit or other governmental requirement that the Lessor may have jurisdiction over in its regulatory capacity. Nothing contained in this Lease shall be interpreted or construed as contracting away the exercise of the regulatory or police powers of the Lessor.

8. **Easements.** The parties recognize that certain temporary and permanent easements will be necessary for the Lessee to undertake construction of the Improvements, maintain the Improvements and access the Improvements. Lessor shall grant a non-exclusive easement for ingress, egress, parking and utilities as set forth in "**Exhibit D**" attached hereto (the "**Permanent Easement**"). The duration of the Permanent Easement shall be the same as the Term of this Lease. In addition, the Lessor may grant such temporary construction easements as Lessor deems necessary for the construction of the Improvements.

9. **Maintenance.**

- a) Lessee shall maintain the Leased Premises and its Improvements at all times in the condition required in this Section.
- b) Lessor shall maintain the easement areas and improvements, exclusive of signs and markings placed there by Lessee.

c) Lessor shall maintain the sidewalk, which may be constructed by Lessee, extending from the eastern edge of the Leased Premises to the recreation center area.

d) Lessee shall not permit the creation or maintenance of any nuisance or any unsafe or hazardous or dangerous conditions. Lessor shall provide Lessee written notice of any such condition or nuisance as provided herein, and if Lessee fails to take appropriate action within ten (10) business days of such notice, Lessor may remove the condition or nuisance and charge the cost thereof to Lessee, which cost shall be paid promptly upon demand by Lessor, or Lessor may declare a default of this Lease. Lessee shall, throughout the Term, at its own cost, and without any expense to Lessor, keep maintain, repair and replace all Lessee owned improvements of every kind on the Leased Premises, which are installed by Lessee, and all appurtenances thereto, in good, sanitary and neat order, condition and repair, and except as specifically provided herein, Lessee shall restore and repair any improvements of any kind, that were installed by Lessee, that may be destroyed or damaged by fire, casualty, or any other cause whatsoever. Lessor shall not be obligated to make any repairs, replacements, or renewals of any kind, nature or description whatsoever to the Leased Premises or any improvements thereon.

10. **Utilities.** The parties agree that the Improvements will, at the sole expense of the Lessee, be separately connected for electric, water and wastewater, cable, internet and all other utility services. After such connection, the Lessee shall, at its sole expense, pay the monthly charges billed by Gainesville Regional Utilities and any other utility provider.

11. **Inspection.** Lessor shall have the right, at any and all reasonable times, with at least twenty four (24) hours prior notification to Lessee (or in the event of an emergency, upon whatever notice is reasonable under the circumstances), to enter upon the Leased Premises for the purpose of making inspections to determine whether Lessee is complying with the terms of this Lease and for any other purpose Lessor deems appropriate.

12. **Default and Termination.**

A. Except as otherwise provided herein, the following conditions will place the Lessor or Lessee in default and Notice of Default may be issued:

- 1) If Lessee fails to pay any installment of Rent;
- 2) If either party fails to perform any covenant or term hereof by the other party, and it is not cured within thirty (30) calendar days of notice thereof (without however, limiting any other rights available to the parties pursuant to any other provisions hereof); provided, that if the non-performing party commences efforts to cure within such period and diligently pursues the cure to completion within a reasonable time period, the party shall no longer be entitled to declare a default;
- 3) If Lessee becomes insolvent; (b) Lessee makes an assignment for the

benefit of creditors; (c) Voluntary petition by Lessee for relief under or otherwise seeking the benefit of any bankruptcy, reorganization, arrangement or insolvency law; and (d) Appointment of a receiver or trustee for Lessee; or

4) If Lessee deserts, vacates or abandons the Leased Premises for a period of thirty (30) consecutive calendar days.

5) If Lessee fails to keep the Library open to the public for a period of three consecutive months, except for a period of closure as a result of damage or destruction to the Improvements, wherein other terms set forth otherwise in this Lease shall apply.

B. Fifteen days after Notice of Default has been received, and if the cause of the default has not yet been cured, the non-defaulting party may issue a Notice of Intent to Terminate. This notice must include the reason for the proposed action and a date, no earlier than 30 days from the date of receipt of the Notice to Intent Terminate, when the termination will be considered by either the Library District Governing Board ("Governing Board") or the Gainesville City Commission ("Commission"), whichever is the non-defaulting party, at a public meeting. Regardless of any other provision herein, this Lease may only be terminated by a vote by the Governing Board or the Commission, and only after compliance with the notice terms of this section, Default and Termination.

C. In addition to terminating the Lease in the event of default, the terminating party may exercise any and all other remedies available to it at law and in equity.

13. **Expiration or Termination; Improvements.**

A. In the event the Lessor refuses to enter into any renewals or extensions of the Lease beyond the Initial Term and Renewal Term, then Lessor shall pay to the Lessee the then current appraised value of the Lessee's Improvements, excluding furniture, movable equipment and other personal property. Lessor, at its expense, shall have the Property appraised. The Lessor shall provide the Lessee with a copy of the appraisal report to establish the value of the Improvements. The appraisal shall be prepared by an appraiser holding a current license as a Certified General Appraiser through the Florida Department of Business and Professional Regulation and holding a current MAI designation through the Appraisal Institute. The appraisal shall be prepared in accordance with the Uniform Standards of Professional Appraisal Practice and shall utilize the appropriate approach to valuation for a public building. Notwithstanding the foregoing, after this Lease has been in effect (through amendments, renewals or extensions) for a period of 99 years, then upon termination of the Lease, the Improvements shall become, without payment of monetary consideration, the property of Lessor and Lessee shall have no further obligation to Lessor except as otherwise provided in this Lease.

B. In the event Lessee terminates the Lease or Lessor terminates the Lease as a result of Lessee's unremedied default, then the Improvements shall become, without

payment of consideration, the property of Lessor and Lessee shall have no further obligation to Lessor except as otherwise provided in this Lease.

C. Without limiting Lessee's rights and obligations as set forth in other sections of this Lease, Lessee shall cause all liens, monetary judgments, mortgages, deeds of trust, deeds to secure debt, security interests and other similar encumbrances affecting the Improvements to be released and discharged as of the date this Lease expires or terminates.

D. Upon vacating the Leased Premises at termination or expiration, Lessee must remove its furniture, movable equipment and other personal property not attached to the Leased Premises. Anything not removed on or before the date the Lessee vacates the Leased Premises will become the property of the Lessor. Upon vacating the Leased Premises, Lessee agrees to deliver to Lessor all keys to the Leased Premises and to surrender the Leased Premises immediately and in good order and condition, excepting reasonable wear and tear, and return to the Lessor all tangible personal property supplied by Lessor to Lessee (if any).

14. **Destruction of Improvements.** If the Leased Premises or the Improvements are destroyed or damaged, so as to hinder the effective use of the Improvements in Lessee's sole and exclusive judgment, Lessee may elect to:

A. Terminate this Lease as of the date of the damage or destruction by so notifying the Lessor. If Lessee elects to terminate, Lessee shall coordinate with Lessor to determine whether the Lessor desires to retain the Improvements. If Lessor does not desire to retain the Improvements, Lessee shall remove the same and restore the Leased Premises to its original pre-lease condition within ninety (90) days after Lessor informs Lessee that it does not wish to retain the Improvements; or

B. Repair or replace the Improvements within a reasonable length of time, as Lessor and Lessee mutually determine. The parties recognize that all or a portion of the Library may be closed during this time. In the event the Premises or some portion thereof is temporarily unavailable for occupancy, the Rent shall be apportioned and suspended during the time that repairs are being made, taking into account the proportion of the Premises rendered unavailable for occupancy during the repairs. If a dispute arises as to the amount of Rent due under this clause, Lessee agrees to pay the undisputed amount to Lessor and pay the disputed amount to a mutually agreeable escrow agenda or the Clerk of Court to be held in escrow until the dispute is resolved.

15. **Release of Lessor.** Lessor is hereby released from any damage or injury to person or property caused by or resulting from acts of god or force majeure, including but not limited to, steam, electricity, gas, water, rain, wind, ice, snow or any leak or flow from or into any part of the Premises. In addition, Lessor shall not be liable for any damage, compensation or claim by reason of inconvenience or annoyance arising from the necessity of repairing any portion of the Premises, the interruption of the use of the Premises, or the termination of this Lease by reason of any damage or destruction of the Premises, except as otherwise stated in this

Lease.

16. **Condemnation.** If a condemning authority takes all of the Leased Premises or a portion to render the Leased Premises, in the reasonable opinion of Lessee, unsuitable for the Lessee's Use, this Lease shall terminate as of the date the title vests in the condemning authority. Lessee shall be entitled to the portion of any award payable for the value of its Improvements, moving expenses, prepaid rent and business dislocation expenses and Lessor shall be entitled to receive that portion of the award which has been paid on account of the taking of the land, including lost rent. A sale of all or part of the Leased Premises to a purchaser with the power of eminent domain, in the face of the exercise of eminent domain power, shall be treated as taking by condemnation for the purpose of this paragraph.

17. **Insurance.** Lessee shall purchase and maintain in full force and effect throughout the Term public liability and property damage policies. The policy of general liability insurance shall provide a combined single limit of \$1,000,000. Additionally, Lessee shall maintain insurance against loss by fire, lightning, windstorm, flood, sinkhole, vandalism, malicious mischief and other hazards customarily insured by extended coverage, all risk (now known as causes of loss-special form) coverage on the Improvements for their full replacement value, which shall be adjusted from time to time to reflect current replacement value. All such insurance must be obtained through an insurance company authorized to do business in the State of Florida with an A.M. Best Rating of no less than A and certificates of such insurance shall be filed with Lessor prior to commencement of such construction. Lessor shall be named as additional insured with respect to such insurance and shall be given no less than thirty (30) days written notice of any amendment or cancellation thereof. Upon Lessor's written request, Lessee agrees to review the coverage limits of its liability insurance and increase the same to the extent necessary to adequately cover the operations on the Leased Premises, as determined by Lessee in its reasonable discretion; provided in no event shall Lessor require that Lessee review such limits more than once every two (2) years. Lessee hereby waives all rights to recover against Lessor for any loss or damage to property arising from any cause that would be covered by any insurance required or actually carried under this Lease. Lessee will cause its insurers to issue appropriate waiver of subrogation rights endorsements, and shall supply Lessor with appropriate information from its insurers confirming such waiver to be in effect. Lessor shall be a loss payee on the Lessee's property insurance to ensure that any insurance proceeds paid for the Improvements shall be utilized by Lessee to repair/restore the Improvements if and as required by this Lease.

18. **Lessee's Environmental Covenants and Indemnity.**

A. **Lessee's Use and Storage of Hazardous Substances.**

(1) Lessee may not use, dispose of, store or generate Hazardous Materials on the Leased Premises except those disclosed to and approved in writing by, in the sole discretion of, the Lessor. Lessor's approval of Lessee's use of the Hazardous Substances (as hereinafter defined) shall be limited to the maximum annual quantities listed in the written approval and subject to Lessee's compliance with this Section and Lessee's compliance with all applicable Environmental Laws (as hereinafter defined). Lessor's approval of Lessee's use and storage of the

Hazardous Substances shall not be deemed to constitute a determination of Lessor with respect to the legality or appropriateness of the storage methods or disposal methods detailed therein or otherwise employed by Lessee on the Premises; Lessor has not and will not undertake an independent review of Lessee's storage or disposal methods, and is relying entirely on Lessee's representation that its storage and disposal practices are in full compliance with applicable Environmental Laws. Except in accordance with applicable Environmental Laws and as disclosed by Lessee and permitted in writing by Lessor, the storage, use or disposal of Hazardous Substances on the Premises is hereby prohibited. Prior to taking possession of the Premises, Lessee shall supply Lessor with Material Safety Data Sheets for all Hazardous Substances used, stored or disposed of by Lessee in connection with Lessee's use, occupancy, and possession of the Premises.

(2) Lessee shall obtain and maintain any and all necessary government permits, licenses, certifications and approvals required or appropriate for the use, handling, storage, and off-site disposal of any Hazardous Substances used, stored, generated, transported, handled, blended, or recycled by Lessee on the Premises. Lessor shall have a continuing right, without obligation, to require Lessee to obtain, and to review and inspect any and all such permits, licenses, certifications and approvals, together with copies of any and all Hazardous Substances management plans and programs, any and all Hazardous Substances risk management and pollution prevention programs, and any and all Hazardous Substances emergency response and employee training programs respecting Lessee's use of Hazardous Substances. Upon request of Lessor, Lessee shall deliver to Lessor, a narrative description explaining the nature and scope of Lessee's activities involving Hazardous Substances and showing, to Lessor's satisfaction, its compliance with all Environmental Laws and the terms of this Lease.

(3) Lessee shall promptly provide Lessor with copies of all correspondence, reports, Notices (as hereinafter defined), orders, findings, declarations and other materials relevant to Lessee's compliance with applicable Environmental Laws as they are issued or received by Lessee.

(4) In the event of Lessee's failure to comply in full with the foregoing provisions, Lessor may, at its sole and absolute discretion, perform any and all of Lessee's obligations in this Section. All reasonable costs and expenses incurred by Lessor in the exercise of this right shall be deemed to be additional rent payable on demand and with interest, at the highest rate authorized by law, until payment is made. Such costs and expenses include but are not limited to state agency fees, engineering fees, investigation and cleanup costs, any penalties assessed by any governmental authority based on Lessee's failure to comply with Environmental Laws, filing fees and suretyship expenses, and associated attorneys' fees and expenses.

B. Environmental Indemnity. Without limiting Lessee's obligations under any other provision of this Lease, Lessee and its successors and assigns shall hereby indemnify, defend, protect, and hold Lessor, its officers, employees, elected officials, agents, lenders, consultants, independent contractors, and any successors to Lessor's interest ("Indemnified Parties") harmless from and against, and shall reimburse the Indemnified Parties for any and all losses, claims, liabilities, damages, costs, expenses, causes of action, judgments, damages, enforcement actions, taxes, remedial actions, the diminution in the value of the Premises, the Building, or any portion thereof, and injuries to persons, property or natural resources, arising out of Lessee's breach of any provision (or representation, warranty, or covenant) contained in this Section 18 arising from, out of, in connection with, or as a consequence, directly or indirectly, of the Release or presence of any Hazardous Substances on, in, or beneath the Premises or that may have migrated from the Premises to any adjacent lands, air or water, which first occurs during the Term of this Lease, as the same may be extended by law or agreement of the parties, whether foreseeable or unforeseeable, and whether or not known to Lessee, it being understood and agreed that the foregoing indemnity includes, but is not limited to, all costs of removal, remediation of any kind, detoxification, clean up and disposal of such Hazardous Substances and the preparation of any closure or other required plans, all costs of determining whether the Premises is in compliance and causing the Premises to be in compliance with all applicable Environmental Laws, all costs and fees associated with claims for damages to persons, property, or natural resources, and Lessor's reasonable attorney's fees and consultant's fees and court costs in respect thereto, whether or not litigation or administrative proceedings shall occur, including all costs and expenses incurred or suffered by Lessor by reason of any violation of any applicable Environmental Law which first occurs, or has first occurred, upon the Premises during the Term of this Lease, as the same may be extended by law or agreement of the parties, or by reason of the imposition of fines or penalties, or any governmental lien for the recovery of environmental clean-up costs, expended by reason of such violation, it being expressly understood and agreed that to the extent the Indemnified Parties or any of them are strictly liable under any Environmental Laws, this indemnity shall apply without regard to the strict liability with respect to the violation of law which results in such liability. Lessee shall comply with all Environmental Laws throughout the Term of this Lease, as the same may be extended by law or agreement of the parties. Lessee hereby covenants and agrees that all obligations of Lessee under this Section 18 shall survive any termination of the Lease, it being further understood and agreed that the rights of Lessor under this Section 18 shall be in addition to any other rights and remedies under this Lease, or otherwise available to Lessor at law or in equity.

C. Definitions.

(1) The term "Environmental Laws" shall mean and include any and all federal, state or local laws (whether under common law, statute, rule, regulation, ordinance or otherwise), requirements under permits or other authorizations issued with respect thereto, and other orders, decrees, judgments, directives or

other requirements of any governmental authority relating to or imposing liability or standards of conduct (including disclosure or notification) concerning the protection of human health or the environment, Hazardous Substances or any activity involving Hazardous Substances, including without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 et seq. ("CERCLA"), as amended; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6921 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. Sections 651 et seq ("OSHA"); the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 136; the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 et seq.; the Federal Solid Waste Disposal Act, 42 U.S.C. Sections 6901 et seq.; the Clean Air Act, 42 U.S.C. Sections 7401 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Sections 11001 et seq.; Chapters 376 and 403, Florida Statutes; Chapter 62, Florida Administrative Code; and any regulation implementing the above.

(2) The term "Hazardous Substances" shall have the meaning ascribed to it in CERCLA; provided, however, that the definition of the term "Hazardous Substances" shall also include (if not included within the definition contained in CERCLA) any hazardous or toxic chemical, waste, byproduct, pollutant, contaminant, compound, product or substance, including without limitation, asbestos, polychlorinated biphenyls, petroleum (including crude oil or any fraction or byproduct thereof), hydrocarbons, radon, urea, urea formaldehyde, and any material the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of which is prohibited, controlled, limited or regulated in any manner under any Environmental Laws.

(3) The term "Release" shall have the meaning ascribed to it in CERCLA and shall also include (if not included within the definition contained in CERCLA) any spill, leak, emission, discharge or disposal of Hazardous Substances into the environment.

(4) The term "Notice" shall mean any summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, actual or threatened, from the Florida Department of Environmental Protection ("FDEP"), the United States Environmental Protection Agency ("USEPA"), the United States Occupational Safety and Health Administration ("OSHA") or other federal, state or local agency or authority, or any other entity or any individual, concerning any act or omission resulting or which may result in the Release of Hazardous Substances into the waters or onto the lands of the State of Florida, or into waters outside the jurisdiction of the State of Florida, or into the environment.

19. **Employees and Agents of Lessee.** The employees and agents of Lessee shall not be deemed to be employees or agents of Lessor solely by the existence and terms of this Lease.

20. **Notices.** All notices required or permitted under this Agreement shall be in writing and shall be deemed effective upon personal delivery, delivery by U.S. Mail, registered or certified, and postage prepaid, or delivery by a recognized overnight delivery service. Such notices shall be addressed to the party at the addresses shown below, or at such other address or addresses as either party shall designate to the other in writing in accordance with this paragraph:

If to Lessor, to: Russ Blackburn
City Manager
City of Gainesville
200 E. University Avenue, Suite 402
P.O. Box 490, Station 6
Gainesville, Florida 32627

If to Lessee, to: Shaney Livingston, Library Director
Alachua County Library District
401 East University Avenue
Gainesville, Florida 32601

21. **Title and Quiet Enjoyment.** Subject to Lessee complying with the Lease, Lessor covenants that Lessee shall have the quiet enjoyment of the Leased Premises against the claims of all persons claiming by, through or under Lessor during the Term.

22. **Encumbrances; Assignments and Subleases.** Lessee may enter into financing which is secured by a leasehold mortgage on the Improvements, but shall not encumber fee simple interest in the Leased Premises. However, Lessee shall not have the right at any time to pledge, hypothecate, mortgage or assign this Lease or any estate or interest herein, by operation of law or otherwise, or to sublet the Leased Premises or any part thereof without the prior written consent of Lessor which may be withheld in the sole discretion of the Lessor. Any such transfer of this Lease or sublease made without Lessor's consent shall be void and of no force and effect. The consent of Lessor to any one or more assignments, subleases, transfers or liens shall not operate to exhaust the Lessor's rights under this section, nor shall Lessor's consent operate to release Lessee from any of its obligations under this Agreement.

23. **Certifications.** Either party may request, in writing, that the other party certify information to a prospective lender or mortgagee. Such certification shall be transmitted within thirty (30) days after receipt of written request and may be relied upon by the party who requested it, and the contents of the certificate shall be binding upon the party executing it. The certificate may include (i) the validity, force and effect of this Lease; (ii) the extent to which this Lease has been supplemented or amended; (iii) the existence of any default; (iv) the existence of any offsets, counter-claims or defenses on the part of the other party; (v) the commencement and

expiration dates of the term, (vi) the amount of any prepaid rent; and (vii) any other information as may reasonably be requested.

24. **Covenant Against Liens.** If, because of any act or omission of Lessee or any party claiming by through or under Lessee, any lien, charge, or order for the payment of money shall be filed against Lessor or any portion of the Premises, Lessee shall, at its own cost and expense, cause the same to be discharged of record or bonded within twenty (20) days after written notice from Lessor to Lessee of the filing thereof; and Lessee shall indemnify and save harmless Lessor against and from all costs, liabilities, suits, penalties, claims, and demands, including reasonable counsel fees, resulting therefrom.

25. **Indemnification/Waiver of Liability.** Lessee shall indemnify and save harmless Lessor, its officers, employees and elected and appointed officials, from and against any and all liability, damage, penalties or judgments arising from injury to person or property sustained by anyone in and about the Leased Premises resulting from any act(s) or omission(s) of Lessee, or Lessee's officers, agents, invitees, employees or contractors. Lessee shall, at its own cost and expense, defend with counsel acceptable to Lessor any and all suits or actions (just or unjust) which may be brought against Lessor or in which Lessor may be impleaded with others upon any such above-mentioned matter, claim or claims. This indemnification shall not be limited to the insurance coverage provided herein. This indemnification obligation shall survive the expiration or termination of the Lease.

26. **Non-discrimination.** Lessee shall not discriminate against any person upon the basis of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity, in either employment, contracting or with regard to its services, as applicable, in accordance with any federal, state and local laws.

27. **Relationship with Lessor.** Lessee shall not use any trademark, service mark, trade name or other indicia of the Lessee, nor shall Lessee hold itself out as having any business affiliation with the Lessor other than a Lessor-Lessee relationship, and upon direction of the Lessor, the Lessee shall issue public disclaimers to that effect.

28. **Miscellaneous.**

A. Lessee shall surrender possession of the Leased Premises to Lessor upon the expiration or termination of this Lease, free of all trash, junk, garbage and other similar debris. If Lessee remains in possession of the Leased Premises following the expiration of the term, such hold over shall result in a tenancy at will and the Rent shall be 200% of the then current Rent. This provision does not give Lessee any right to hold over.

B. This Lease constitutes the entire agreement and understanding of Lessor and Lessee with respect to the subject matter of this Lease, and supersedes all options offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by Lessor and Lessee.

C. If either Lessor or Lessee is represented by a broker in this transaction, that party shall be fully responsible for any fees due such broker and shall hold the other party harmless from any claims for commission by such broker.

D. This Lease shall be construed in accordance with the laws of the State of Florida with venue in Alachua County, Florida.

E. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect; provided the intent and purpose of the Lease can be fulfilled.

F. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties, it being understood that all parties need not sign the same counterpart.

G. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. Lessor makes no representation or warranty with respect to the presence or absence of radon in or about the Leased Premises.

H. Except as otherwise expressly provided in this Agreement and Lease, Lessee acknowledges and agrees that (i) Lessor has not made and is not making any representations, warranties, assurances or guarantees to Lessee regarding the Leased Premises, express or implied, and (ii) Lessee is leasing the Leased Premises in its present condition, AS IS, WHERE IS.

I. No provision(s) of this Lease shall be interpreted or deemed as a waiver of Lessor's sovereign immunity.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first written above.

LESSOR:

CITY OF GAINESVILLE

ATTEST:

By: _____

Kurt Lannon, Clerk of the Commission

Craig Lowe, Mayor

Approved as to Form and Legality:

Nicolle M. Shalley, City Attorney

ATTEST:

J. K. Irby, Clerk

LESSEE:

ALACHUA COUNTY LIBRARY DISTRICT

By: _____
Chair, Governing Board

Print name: _____

**GROUND LEASE AGREEMENT FOR PERMANENT PUBLIC LIBRARY
AT CONE PARK**

THIS GROUND LEASE AGREEMENT (“Lease”) is made effective on _____, (the “Commencement Date” or “Effective Date”) by and between the **CITY OF GAINESVILLE**, a Florida municipal corporation (“Lessor”), and **ALACHUA COUNTY LIBRARY DISTRICT, an Independent Special District** (“Lessee”).

WHEREAS, Lessor and Lessee have entered into a Ground Lease for a modular building located on a portion of the Fred Cone Park owned by the Lessor (“Cone Park”) which serves as a temporary branch library;

WHEREAS, since the installation of the temporary branch library, the parties have continued to work cooperatively toward the goal of locating a permanent branch library at Cone Park;

WHEREAS, Lessee now desires to move forward with construction of the permanent public library; and

NOW THEREFORE, in consideration of \$1.00, paid by Lessee to Lessor, receipt of which is hereby acknowledged, and in consideration of the mutual covenants and conditions herein contained, it is agreed by the parties as follows:

1. **Leased Premises**: The Lessor does hereby grant a ground lease to the Lessee of the real property depicted in the sketch, attached hereto as **Exhibit “A”** (the “**Leased Premises**”). Lessor shall prepare a legal description of the Leased Premises within 30 days of Lessee obtaining final development plan approval and the parties shall amend this Lease to include the legal description.
2. **Term**. The term of this Lease shall be for fifty (50) consecutive years commencing on the Commencement Date (“**Initial Term**”). Upon expiration, the Lease shall be renewed automatically on the same terms and conditions as set forth in this Lease for a period of ten (10) years (the “**Renewal Term**”), unless (i) Lessee is in default beyond applicable notice and cure periods on the date the Renewal Term commences, or (ii) Lessee notifies Lessor of Lessee's intention not to renew the Lease at least ninety (90) days prior to the expiration of the Initial Term. As used in this Lease, “**Term**” shall mean the Initial Term and the Renewal Term. Beyond, the Initial Term and Renewal Term, this Lease may renewed and extended by mutual written agreement of the Lessor and Lessee.
3. **Memorandum of Lease**. The parties agree that a Memorandum of Lease in the form attached hereto as **Exhibit “B”** shall be executed by the parties and recorded by Lessee, at Lessee’s cost and expense, within thirty (30) days of execution of this Lease by both parties.
4. **Rent; Taxes**. Commencing on the first day of the Term, Lessee shall pay to

Lessor the amount of rent (“**Rent**”) provided in the Rent Schedule attached hereto as **Exhibit “C”**, plus any applicable Federal, State, County or local sales or use tax or other tax on rents. Rent shall be payable in advance on or before the first (1st) day of each calendar month, without any notice, demand, or offset, and shall be remitted to the address stated in **Exhibit “C”**, or such other address as Lessor may direct by notice in writing to Lessee. It shall be the sole responsibility of the Lessor to remit the Lessee’s payment of any applicable Federal, State, County or local sales, or use tax or other tax on rents to the appropriate taxing authority. If the Commencement Date, or the date of termination (the “**Termination Date**”), of this Lease is other than the first (1st) day of a calendar month, the first and last month rent shall be prorated.

In the event any installment of any the rent owed by Lessee is not paid when due, Lessee shall pay a late charge equal to ten percent (10%) of the amount due. The parties agree that such charge is a fair and reasonable estimate of Lessor's administrative and other expense incurred on account of late payment. Should Lessee make a partial payment of past due amounts, the amount of such partial payment shall be applied first to reduce all accrued and unpaid late charges and then to reduce all other past due amounts. In addition, late payments of rent shall bear interest from the date due at a rate of twelve percent (12%) or the highest rate then permitted by law, whichever is less.

In the event that any tax or assessment, whether ad valorem or otherwise, is levied as a result of or on the basis of this Lease against the Leased Premises or on other improvements placed thereon by Lessee, or upon any estate hereby created, Lessee covenants and agrees to promptly pay and discharge said taxes. It is agreed that Lessee shall assume and be responsible for the payment of such taxes and assessments, if any, for the year in which this Lease is executed, and thereafter, during the term of this Lease. Payment of said taxes or assessments shall be in addition to the rent payment provided for in this Lease. Lessee shall pay directly to the collecting authority such taxes and/or assessments within thirty (30) days of receipt of a bill for said taxes or assessments.

In the event that a tax assessment is levied on a portion of Cone Park outside of the Leased Premises, as a result of this Lease, then Lessee will assist Lessor in challenging the assessment.

5. **Use.** The use of the Leased Premises by Lessee is limited solely to the construction and operation of a permanent public library (“**Lessee’s Use**” or “**Library**”). The Leased Premises shall at all times be considered a part of those certain lands known as Fred Cone Park and the use of the Leased Premises, as well as all persons entering thereon or therein, whether as an employee, agent, guest, or invitee of the Lessee, shall be subject to all applicable laws, statutes, ordinances, orders, rules and regulations of Federal, State, county and municipal authorities, and of any departments or divisions thereof, and of the applicable regulations of the Lessor. Lessee shall not make nor suffer any unlawful, improper or offensive use of the Leased Premises or any use or occupancy thereof.

6. **Improvements.**

A. **By Lessor.** The Lessor has planned and constructed park improvements and infrastructure, including but not limited to, parking, lighting and

utilities. Some of this infrastructure is available to serve the Library and therefore, the Lessee has agreed to contribute \$149,000 towards such infrastructure. The Lessee shall make payment to the Lessor within 15 days of approval of the Lease by both parties.

B. By Lessee. The Lessee shall, at its sole expense, construct a permanent library building and all improvements, such as utilities, necessary and required for Lessee's Use (the "**Improvements**"). The Lessee shall, at its sole expense, obtain all permits and approvals required by the City, and any other applicable regulatory agency, to construct and operate the Library on the Leased Premises. Lessee shall cause the Improvements and any subsequent improvements or alterations to the Leased Premises to be constructed in accordance with applicable laws. Construction of the Improvements shall be commenced and completed (as evidenced by issuance of a certificate of occupancy) within 3 years of the Commencement Date of this Lease. If the construction has commenced, but is not completed, Lessee may request an extension of time, not to exceed two years, for good cause shown. Upon finding good cause shown, Lessor may grant the extension. Failure to meet the construction deadline (as extended, if applicable) shall be a default under this Lease.

(1) Lessee may make such alterations, improvements, and changes to any Improvements that may from time to time be on the Leased Premises as the Lessee may deem necessary, provided Lessee first obtains Lessor's prior written approval for any exterior alterations, improvements or changes. The parties agree that the Lessor maintains final approval over all architectural designs, improvements or alterations to the exterior. In the event of damage to or destruction of the Premises, Lessee may rebuild or replace improvements to the design before the damage or destruction, without Lessor's approval, in accordance with existing law.

(2) Lessee shall promptly pay for all labor and materials used in constructing any improvements, alterations or fixtures on the Premises and shall do all things necessary to prevent the filing of any mechanics', materialman, or other type of lien or claim against Lessor or the Leased Premises by, against, through, or under Lessee or its contractors. Lessee shall notify its contractors that Lessor's interest shall not be subject to any liens or shall not be subject to any liens or claims for alterations, improvements or fixtures to the Leased Premises by Lessee. If any such lien or claim is filed, Lessee shall cause the same to be discharged within twenty (20) calendar days of the filing of the lien.

(3) Lessee's contractor performing any work hereunder shall obtain payment and performance bonds (or public construction bonds) in face amounts of 100% of the value of the work. All bonds shall inure to the benefit of the Lessor.

(4) Lessee shall require any and all contractor(s) performing work on the Leased Premises to obtain, prior to commencement of construction of

any improvements made to or on the Leased Premises by or on behalf of the Lessee, the following:

a. Workers' Compensation Insurance for all persons engaged in said construction.

b. Public Liability and Property Damage Insurance for the duration of said construction, to protect contractor and all of its approved construction sub-contractors from claims for damages for personal injury and accidental death and to property.

c. All insurance required under this section shall be in the amount of One Million (\$1,000,000.00) Dollars for each occurrence and One Million (\$1,000,000.00) Dollars in aggregate or the limits of liability required by law, whichever is greater. All such insurance must be obtained through an insurance company authorized to do business in the State of Florida with an A.M. Best Rating of no less than A, and certificates of such insurance shall be filed with Lessor prior to commencement of such construction. Lessor shall be named as additional insureds with respect to such insurance and shall be given no less than thirty (30) days written notice of any amendment or cancellation thereof.

7. **Lessor acting in Proprietary Capacity.** The parties recognize that the Lessor is entering this Lease in its proprietary capacity, as owner of the Leased Premises, and not in its regulatory capacity. The parties agree that nothing contained in this Lease shall be interpreted or construed as an approval, waiver or contract to approve or waive any permit or other governmental requirement that the Lessor may have jurisdiction over in its regulatory capacity. Nothing contained in this Lease shall be interpreted or construed as contracting away the exercise of the regulatory or police powers of the Lessor.

8. **Easements.** The parties recognize that certain temporary and permanent easements will be necessary for the Lessee to undertake construction of the Improvements, maintain the Improvements and access the Improvements. Lessor shall grant a non-exclusive easement for ingress, egress, parking and utilities as set forth in "**Exhibit D**" attached hereto (the "**Permanent Easement**"). The duration of the Permanent Easement shall be the same as the Term of this Lease. In addition, the Lessor may grant such temporary construction easements as Lessor deems necessary for the construction of the Improvements.

9. **Maintenance.**

a) Lessee shall maintain the Leased Premises and its Improvements at all times in the condition required in this Section.

b) Lessor shall maintain the easement areas and improvements, exclusive of signs and markings placed there by Lessee.

c) Lessor shall maintain the sidewalk, which may be constructed by Lessee, extending from the eastern edge of the Leased Premises to the recreation center area.

d) Lessee shall not permit the creation or maintenance of any nuisance or any unsafe or hazardous or dangerous conditions. Lessor shall provide Lessee written notice of any such condition or nuisance as provided herein, and if Lessee fails to take appropriate action within ten (10) business days of such notice, Lessor may remove the condition or nuisance and charge the cost thereof to Lessee, which cost shall be paid promptly upon demand by Lessor, or Lessor may declare a default of this Lease. Lessee shall, throughout the Term, at its own cost, and without any expense to Lessor, keep maintain, repair and replace all Lessee owned improvements of every kind on the Leased Premises, which are installed by Lessee, and all appurtenances thereto, in good, sanitary and neat order, condition and repair, and except as specifically provided herein, Lessee shall restore and repair any improvements of any kind, that were installed by Lessee, that may be destroyed or damaged by fire, casualty, or any other cause whatsoever. Lessor shall not be obligated to make any repairs, replacements, or renewals of any kind, nature or description whatsoever to the Leased Premises or any improvements thereon.

10. **Utilities.** The parties agree that the Improvements will, at the sole expense of the Lessee, be separately connected for electric, water and wastewater, cable, internet and all other utility services. After such connection, the Lessee shall, at its sole expense, pay the monthly charges billed by Gainesville Regional Utilities and any other utility provider.

11. **Inspection.** Lessor shall have the right, at any and all reasonable times, with at least twenty four (24) hours prior notification to Lessee (or in the event of an emergency, upon whatever notice is reasonable under the circumstances), to enter upon the Leased Premises for the purpose of making inspections to determine whether Lessee is complying with the terms of this Lease and for any other purpose Lessor deems appropriate.

12. **Default and Termination.**

A. Except as otherwise provided herein, the following conditions will place the Lessor or Lessee in default and Notice of Default may be issued:

- 1) If Lessee fails to pay any installment of Rent;
- 2) If either party fails to perform any covenant or term hereof by the other party, and it is not cured within thirty (30) calendar days of notice thereof (without however, limiting any other rights available to the parties pursuant to any other provisions hereof); provided, that if the non-performing party commences efforts to cure within such period and diligently pursues the cure to completion within a reasonable time period, the party shall no longer be entitled to declare a default;
- 3) If Lessee becomes insolvent; (b) Lessee makes an assignment for the

benefit of creditors; (c) Voluntary petition by Lessee for relief under or otherwise seeking the benefit of any bankruptcy, reorganization, arrangement or insolvency law; and (d) Appointment of a receiver or trustee for Lessee; or

4) If Lessee deserts, vacates or abandons the Leased Premises for a period of thirty (30) consecutive calendar days.

5) If Lessee fails to keep the Library open to the public for a period of three consecutive months, except for a period of closure as a result of damage or destruction to the Improvements, wherein other terms set forth otherwise in this Lease shall apply.

B. Fifteen days after Notice of Default has been received, and if the cause of the default has not yet been cured, the non-defaulting party may issue a Notice of Intent to Terminate. This notice must include the reason for the proposed action and a date, no earlier than 30 days from the date of receipt of the Notice to Intent Terminate, when the termination will be considered by either the Library District Governing Board ("Governing Board") or the Gainesville City Commission ("Commission"), whichever is the non-defaulting party, at a public meeting. Regardless of any other provision herein, this Lease may only be terminated by a vote by the Governing Board or the Commission, and only after compliance with the notice terms of this section, Default and Termination.

C. In addition to terminating the Lease in the event of default, the terminating party may exercise any and all other remedies available to it at law and in equity.

13. **Expiration or Termination; Improvements.**

A. In the event the Lessor refuses to enter into any renewals or extensions of the Lease beyond the Initial Term and Renewal Term, then Lessor shall pay to the Lessee the then current appraised value of the Lessee's Improvements, excluding furniture, movable equipment and other personal property. Lessor, at its expense, shall have the Property appraised. The Lessor shall provide the Lessee with a copy of the appraisal report to establish the value of the Improvements. The appraisal shall be prepared by an appraiser holding a current license as a Certified General Appraiser through the Florida Department of Business and Professional Regulation and holding a current MAI designation through the Appraisal Institute. The appraisal shall be prepared in accordance with the Uniform Standards of Professional Appraisal Practice and shall utilize the appropriate approach to valuation for a public building. Notwithstanding the foregoing, after this Lease has been in effect (through amendments, renewals or extensions) for a period of 99 years, then upon termination of the Lease, the Improvements shall become, without payment of monetary consideration, the property of Lessor and Lessee shall have no further obligation to Lessor except as otherwise provided in this Lease.

B. In the event Lessee terminates the Lease or Lessor terminates the Lease as a result of Lessee's unremedied default, then the Improvements shall become, without

payment of consideration, the property of Lessor and Lessee shall have no further obligation to Lessor except as otherwise provided in this Lease.

C. Without limiting Lessee's rights and obligations as set forth in other sections of this Lease, Lessee shall cause all liens, monetary judgments, mortgages, deeds of trust, deeds to secure debt, security interests and other similar encumbrances affecting the Improvements to be released and discharged as of the date this Lease expires or terminates.

D. Upon vacating the Leased Premises at termination or expiration, Lessee must remove its furniture, movable equipment and other personal property not attached to the Leased Premises. Anything not removed on or before the date the Lessee vacates the Leased Premises will become the property of the Lessor. Upon vacating the Leased Premises, Lessee agrees to deliver to Lessor all keys to the Leased Premises and to surrender the Leased Premises immediately and in good order and condition, excepting reasonable wear and tear, and return to the Lessor all tangible personal property supplied by Lessor to Lessee (if any).

14. **Destruction of Improvements.** If the Leased Premises or the Improvements are destroyed or damaged, so as to hinder the effective use of the Improvements in Lessee's sole and exclusive judgment, Lessee may elect to:

A. Terminate this Lease as of the date of the damage or destruction by so notifying the Lessor. If Lessee elects to terminate, Lessee shall coordinate with Lessor to determine whether the Lessor desires to retain the Improvements. If Lessor does not desire to retain the Improvements, Lessee shall remove the same and restore the Leased Premises to its original pre-lease condition within ninety (90) days after Lessor informs Lessee that it does not wish to retain the Improvements; or

B. Repair or replace the Improvements within a reasonable length of time, as Lessor and Lessee mutually determine. The parties recognize that all or a portion of the Library may be closed during this time. In the event the Premises or some portion thereof is temporarily unavailable for occupancy, the Rent shall be apportioned and suspended during the time that repairs are being made, taking into account the proportion of the Premises rendered unavailable for occupancy during the repairs. If a dispute arises as to the amount of Rent due under this clause, Lessee agrees to pay the undisputed amount to Lessor and pay the disputed amount to a mutually agreeable escrow agenda or the Clerk of Court to be held in escrow until the dispute is resolved.

15. **Release of Lessor.** Lessor is hereby released from any damage or injury to person or property caused by or resulting from acts of god or force majeure, including but not limited to, steam, electricity, gas, water, rain, wind, ice, snow or any leak or flow from or into any part of the Premises. In addition, Lessor shall not be liable for any damage, compensation or claim by reason of inconvenience or annoyance arising from the necessity of repairing any portion of the Premises, the interruption of the use of the Premises, or the termination of this Lease by reason of any damage or destruction of the Premises, except as otherwise stated in this

Lease.

16. **Condemnation.** If a condemning authority takes all of the Leased Premises or a portion to render the Leased Premises, in the reasonable opinion of Lessee, unsuitable for the Lessee's Use, this Lease shall terminate as of the date the title vests in the condemning authority. Lessee shall be entitled to the portion of any award payable for the value of its Improvements, moving expenses, prepaid rent and business dislocation expenses and Lessor shall be entitled to receive that portion of the award which has been paid on account of the taking of the land, including lost rent. A sale of all or part of the Leased Premises to a purchaser with the power of eminent domain, in the face of the exercise of eminent domain power, shall be treated as taking by condemnation for the purpose of this paragraph.

17. **Insurance.** Lessee shall purchase and maintain in full force and effect throughout the Term public liability and property damage policies. The policy of general liability insurance shall provide a combined single limit of \$1,000,000. Additionally, Lessee shall maintain insurance against loss by fire, lightning, windstorm, flood, sinkhole, vandalism, malicious mischief and other hazards customarily insured by extended coverage, all risk (now known as causes of loss-special form) coverage on the Improvements for their full replacement value, which shall be adjusted from time to time to reflect current replacement value. All such insurance must be obtained through an insurance company authorized to do business in the State of Florida with an A.M. Best Rating of no less than A and certificates of such insurance shall be filed with Lessor prior to commencement of such construction. Lessor shall be named as additional insured with respect to such insurance and shall be given no less than thirty (30) days written notice of any amendment or cancellation thereof. Upon Lessor's written request, Lessee agrees to review the coverage limits of its liability insurance and increase the same to the extent necessary to adequately cover the operations on the Leased Premises, as determined by Lessee in its reasonable discretion; provided in no event shall Lessor require that Lessee review such limits more than once every two (2) years. Lessee hereby waives all rights to recover against Lessor for any loss or damage to property arising from any cause that would be covered by any insurance required or actually carried under this Lease. Lessee will cause its insurers to issue appropriate waiver of subrogation rights endorsements, and shall supply Lessor with appropriate information from its insurers confirming such waiver to be in effect. Lessor shall be a loss payee on the Lessee's property insurance to ensure that any insurance proceeds paid for the Improvements shall be utilized by Lessee to repair/restore the Improvements if and as required by this Lease.

18. **Lessee's Environmental Covenants and Indemnity.**

A. **Lessee's Use and Storage of Hazardous Substances.**

(1) Lessee may not use, dispose of, store or generate Hazardous Materials on the Leased Premises except those disclosed to and approved in writing by, in the sole discretion of, the Lessor. Lessor's approval of Lessee's use of the Hazardous Substances (as hereinafter defined) shall be limited to the maximum annual quantities listed in the written approval and subject to Lessee's compliance with this Section and Lessee's compliance with all applicable Environmental Laws (as hereinafter defined). Lessor's approval of Lessee's use and storage of the

Hazardous Substances shall not be deemed to constitute a determination of Lessor with respect to the legality or appropriateness of the storage methods or disposal methods detailed therein or otherwise employed by Lessee on the Premises; Lessor has not and will not undertake an independent review of Lessee's storage or disposal methods, and is relying entirely on Lessee's representation that its storage and disposal practices are in full compliance with applicable Environmental Laws. Except in accordance with applicable Environmental Laws and as disclosed by Lessee and permitted in writing by Lessor, the storage, use or disposal of Hazardous Substances on the Premises is hereby prohibited. Prior to taking possession of the Premises, Lessee shall supply Lessor with Material Safety Data Sheets for all Hazardous Substances used, stored or disposed of by Lessee in connection with Lessee's use, occupancy, and possession of the Premises.

(2) Lessee shall obtain and maintain any and all necessary government permits, licenses, certifications and approvals required or appropriate for the use, handling, storage, and off-site disposal of any Hazardous Substances used, stored, generated, transported, handled, blended, or recycled by Lessee on the Premises. Lessor shall have a continuing right, without obligation, to require Lessee to obtain, and to review and inspect any and all such permits, licenses, certifications and approvals, together with copies of any and all Hazardous Substances management plans and programs, any and all Hazardous Substances risk management and pollution prevention programs, and any and all Hazardous Substances emergency response and employee training programs respecting Lessee's use of Hazardous Substances. Upon request of Lessor, Lessee shall deliver to Lessor, a narrative description explaining the nature and scope of Lessee's activities involving Hazardous Substances and showing, to Lessor's satisfaction, its compliance with all Environmental Laws and the terms of this Lease.

(3) Lessee shall promptly provide Lessor with copies of all correspondence, reports, Notices (as hereinafter defined), orders, findings, declarations and other materials relevant to Lessee's compliance with applicable Environmental Laws as they are issued or received by Lessee.

(4) In the event of Lessee's failure to comply in full with the foregoing provisions, Lessor may, at its sole and absolute discretion, perform any and all of Lessee's obligations in this Section. All reasonable costs and expenses incurred by Lessor in the exercise of this right shall be deemed to be additional rent payable on demand and with interest, at the highest rate authorized by law, until payment is made. Such costs and expenses include but are not limited to state agency fees, engineering fees, investigation and cleanup costs, any penalties assessed by any governmental authority based on Lessee's failure to comply with Environmental Laws, filing fees and suretyship expenses, and associated attorneys' fees and expenses.

B. Environmental Indemnity. Without limiting Lessee's obligations under any other provision of this Lease, Lessee and its successors and assigns shall hereby indemnify, defend, protect, and hold Lessor, its officers, employees, elected officials, agents, lenders, consultants, independent contractors, and any successors to Lessor's interest ("Indemnified Parties") harmless from and against, and shall reimburse the Indemnified Parties for any and all losses, claims, liabilities, damages, costs, expenses, causes of action, judgments, damages, enforcement actions, taxes, remedial actions, the diminution in the value of the Premises, the Building, or any portion thereof, and injuries to persons, property or natural resources, arising out of Lessee's breach of any provision (or representation, warranty, or covenant) contained in this Section 18 arising from, out of, in connection with, or as a consequence, directly or indirectly, of the Release or presence of any Hazardous Substances on, in, or beneath the Premises or that may have migrated from the Premises to any adjacent lands, air or water, which first occurs during the Term of this Lease, as the same may be extended by law or agreement of the parties, whether foreseeable or unforeseeable, and whether or not known to Lessee, it being understood and agreed that the foregoing indemnity includes, but is not limited to, all costs of removal, remediation of any kind, detoxification, clean up and disposal of such Hazardous Substances and the preparation of any closure or other required plans, all costs of determining whether the Premises is in compliance and causing the Premises to be in compliance with all applicable Environmental Laws, all costs and fees associated with claims for damages to persons, property, or natural resources, and Lessor's reasonable attorney's fees and consultant's fees and court costs in respect thereto, whether or not litigation or administrative proceedings shall occur, including all costs and expenses incurred or suffered by Lessor by reason of any violation of any applicable Environmental Law which first occurs, or has first occurred, upon the Premises during the Term of this Lease, as the same may be extended by law or agreement of the parties, or by reason of the imposition of fines or penalties, or any governmental lien for the recovery of environmental clean-up costs, expended by reason of such violation, it being expressly understood and agreed that to the extent the Indemnified Parties or any of them are strictly liable under any Environmental Laws, this indemnity shall apply without regard to the strict liability with respect to the violation of law which results in such liability. Lessee shall comply with all Environmental Laws throughout the Term of this Lease, as the same may be extended by law or agreement of the parties. Lessee hereby covenants and agrees that all obligations of Lessee under this Section 18 shall survive any termination of the Lease, it being further understood and agreed that the rights of Lessor under this Section 18 shall be in addition to any other rights and remedies under this Lease, or otherwise available to Lessor at law or in equity.

C. Definitions.

(1) The term "Environmental Laws" shall mean and include any and all federal, state or local laws (whether under common law, statute, rule, regulation, ordinance or otherwise), requirements under permits or other authorizations issued with respect thereto, and other orders, decrees, judgments, directives or

other requirements of any governmental authority relating to or imposing liability or standards of conduct (including disclosure or notification) concerning the protection of human health or the environment, Hazardous Substances or any activity involving Hazardous Substances, including without limitation: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 et seq. ("CERCLA"), as amended; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6921 et seq.; the Occupational Safety and Health Act of 1970, 29 U.S.C. Sections 651 et seq. ("OSHA"); the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Section 136; the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 et seq.; the Federal Solid Waste Disposal Act, 42 U.S.C. Sections 6901 et seq.; the Clean Air Act, 42 U.S.C. Sections 7401 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Sections 11001 et seq.; Chapters 376 and 403, Florida Statutes; Chapter 62, Florida Administrative Code; and any regulation implementing the above.

(2) The term "Hazardous Substances" shall have the meaning ascribed to it in CERCLA; provided, however, that the definition of the term "Hazardous Substances" shall also include (if not included within the definition contained in CERCLA) any hazardous or toxic chemical, waste, byproduct, pollutant, contaminant, compound, product or substance, including without limitation, asbestos, polychlorinated biphenyls, petroleum (including crude oil or any fraction or byproduct thereof), hydrocarbons, radon, urea, urea formaldehyde, and any material the exposure to, or manufacture, possession, presence, use, generation, storage, transportation, treatment, release, disposal, abatement, cleanup, removal, remediation or handling of which is prohibited, controlled, limited or regulated in any manner under any Environmental Laws.

(3) The term "Release" shall have the meaning ascribed to it in CERCLA and shall also include (if not included within the definition contained in CERCLA) any spill, leak, emission, discharge or disposal of Hazardous Substances into the environment.

(4) The term "Notice" shall mean any summons, citation, directive, order, claim, litigation, investigation, proceeding, judgment, letter or other communication, written or oral, actual or threatened, from the Florida Department of Environmental Protection ("FDEP"), the United States Environmental Protection Agency ("USEPA"), the United States Occupational Safety and Health Administration ("OSHA") or other federal, state or local agency or authority, or any other entity or any individual, concerning any act or omission resulting or which may result in the Release of Hazardous Substances into the waters or onto the lands of the State of Florida, or into waters outside the jurisdiction of the State of Florida, or into the environment.

19. **Employees and Agents of Lessee.** The employees and agents of Lessee shall not be deemed to be employees or agents of Lessor solely by the existence and terms of this Lease.

20. **Notices.** All notices required or permitted under this Agreement shall be in writing and shall be deemed effective upon personal delivery, delivery by U.S. Mail, registered or certified, and postage prepaid, or delivery by a recognized overnight delivery service. Such notices shall be addressed to the party at the addresses shown below, or at such other address or addresses as either party shall designate to the other in writing in accordance with this paragraph:

If to Lessor, to: Russ Blackburn
 City Manager
 City of Gainesville
 200 E. University Avenue, Suite 402
 P.O. Box 490, Station 6
 Gainesville, Florida 32627

If to Lessee, to: Shaney Livingston, Library Director
 Alachua County Library District
 401 East University Avenue
 Gainesville, Florida 32601

21. **Title and Quiet Enjoyment.** Subject to Lessee complying with the Lease, Lessor covenants that Lessee shall have the quiet enjoyment of the Leased Premises against the claims of all persons claiming by, through or under Lessor during the Term.

22. **Encumbrances; Assignments and Subleases.** Lessee may enter into financing which is secured by a leasehold mortgage on the Improvements, but shall not encumber fee simple interest in the Leased Premises. However, Lessee shall not have the right at any time to pledge, hypothecate, mortgage or assign this Lease or any estate or interest herein, by operation of law or otherwise, or to sublet the Leased Premises or any part thereof without the prior written consent of Lessor which may be withheld in the sole discretion of the Lessor. Any such transfer of this Lease or sublease made without Lessor's consent shall be void and of no force and effect. The consent of Lessor to any one or more assignments, subleases, transfers or liens shall not operate to exhaust the Lessor's rights under this section, nor shall Lessor's consent operate to release Lessee from any of its obligations under this Agreement.

23. **Certifications.** Either party may request, in writing, that the other party certify information to a prospective lender or mortgagee. Such certification shall be transmitted within thirty (30) days after receipt of written request and may be relied upon by the party who requested it, and the contents of the certificate shall be binding upon the party executing it. The certificate may include (i) the validity, force and effect of this Lease; (ii) the extent to which this Lease has been supplemented or amended; (iii) the existence of any default; (iv) the existence of any offsets, counter-claims or defenses on the part of the other party; (v) the commencement and

expiration dates of the term, (vi) the amount of any prepaid rent; and (vii) any other information as may reasonably be requested.

24. **Covenant Against Liens.** If, because of any act or omission of Lessee or any party claiming by through or under Lessee, any lien, charge, or order for the payment of money shall be filed against Lessor or any portion of the Premises, Lessee shall, at its own cost and expense, cause the same to be discharged of record or bonded within twenty (20) days after written notice from Lessor to Lessee of the filing thereof; and Lessee shall indemnify and save harmless Lessor against and from all costs, liabilities, suits, penalties, claims, and demands, including reasonable counsel fees, resulting therefrom.

25. **Indemnification/Waiver of Liability.** Lessee shall indemnify and save harmless Lessor, its officers, employees and elected and appointed officials, from and against any and all liability, damage, penalties or judgments arising from injury to person or property sustained by anyone in and about the Leased Premises resulting from any act(s) or omission(s) of Lessee, or Lessee's officers, agents, invitees, employees or contractors. Lessee shall, at its own cost and expense, defend with counsel acceptable to Lessor any and all suits or actions (just or unjust) which may be brought against Lessor or in which Lessor may be impleaded with others upon any such above-mentioned matter, claim or claims. This indemnification shall not be limited to the insurance coverage provided herein. This indemnification obligation shall survive the expiration or termination of the Lease.

26. **Non-discrimination.** Lessee shall not discriminate against any person upon the basis of sexual orientation, race, color, gender, age, religion, national origin, marital status, disability or gender identity, in either employment, contracting or with regard to its services, as applicable, in accordance with any federal, state and local laws.

27. **Relationship with Lessor.** Lessee shall not use any trademark, service mark, trade name or other indicia of the Lessee, nor shall Lessee hold itself out as having any business affiliation with the Lessor other than a Lessor-Lessee relationship, and upon direction of the Lessor, the Lessee shall issue public disclaimers to that effect.

28. **Miscellaneous.**

A. Lessee shall surrender possession of the Leased Premises to Lessor upon the expiration or termination of this Lease, free of all trash, junk, garbage and other similar debris. If Lessee remains in possession of the Leased Premises following the expiration of the term, such hold over shall result in a tenancy at will and the Rent shall be 200% of the then current Rent. This provision does not give Lessee any right to hold over.

B. This Lease constitutes the entire agreement and understanding of Lessor and Lessee with respect to the subject matter of this Lease, and supersedes all options offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by Lessor and Lessee.

C. If either Lessor or Lessee is represented by a broker in this transaction, that party shall be fully responsible for any fees due such broker and shall hold the other party harmless from any claims for commission by such broker.

D. This Lease shall be construed in accordance with the laws of the State of Florida with venue in Alachua County, Florida.

E. If any term of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect; provided the intent and purpose of the Lease can be fulfilled.

F. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties, it being understood that all parties need not sign the same counterpart.

G. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. Lessor makes no representation or warranty with respect to the presence or absence of radon in or about the Leased Premises.

H. Except as otherwise expressly provided in this Agreement and Lease, Lessee acknowledges and agrees that (i) Lessor has not made and is not making any representations, warranties, assurances or guarantees to Lessee regarding the Leased Premises, express or implied, and (ii) Lessee is leasing the Leased Premises in its present condition, AS IS, WHERE IS.

I. No provision(s) of this Lease shall be interpreted or deemed as a waiver of Lessor's sovereign immunity.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first written above.

LESSOR:

CITY OF GAINESVILLE

ATTEST:

By: _____

Kurt Lannon, Clerk of the Commission

Craig Lowe, Mayor

Approved as to Form and Legality:

Nicolle M. Shalley, City Attorney

LESSEE:

ATTEST:

ALACHUA COUNTY LIBRARY DISTRICT

J. K. Irby, Clerk

By: _____
Chair, Governing Board
Print name: _____

EXHIBIT "A"

Sketch of Leased Premises

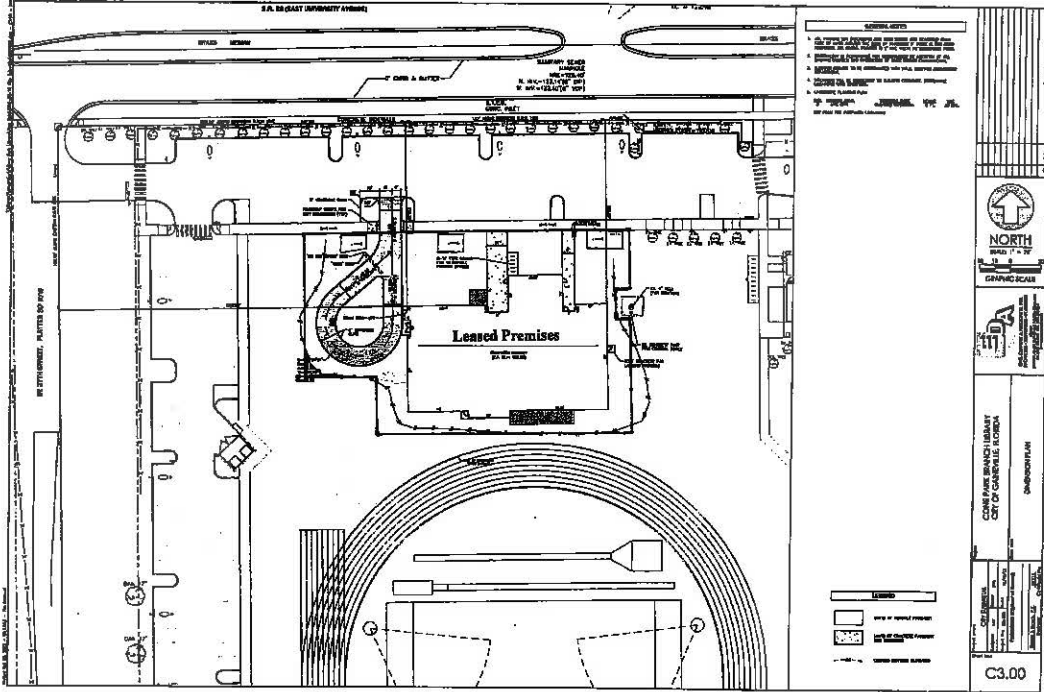


EXHIBIT "B"

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made by and between the **CITY OF GAINESVILLE**, a Florida municipal corporation, ("**Lessor**"), whose address is P.O. Box 490, Station 6, Gainesville, Florida 32627, and **ALACHUA COUNTY LIBRARY DISTRICT, an Independent Special District**, ("**Lessee**"), whose address is 401 East University Avenue, Gainesville, Florida 32601.

1. Lessor and Lessee are parties to a Ground Lease Agreement dated effective _____, 2013 (the "**Lease**") for a permanent public library at Cone Park; the terms and provisions of which are incorporated herein by reference. The premises covered by the Lease are located in Alachua County, Florida, as more fully described in **Exhibit "A"** (the "**Leased Premises**").

2. The Lease provides for an initial term of fifty (50) years which commenced on the Effective Date which will expire on _____. The Lease also provides for renewals.

3. In accordance with Chapter 713.10 of the Florida Statutes, the Lease provides that the interest of the Lessor shall not be subject to liens for improvements made by the Lessee, and that the Lessee shall notify any contractor making such improvements of this provision of the Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease

LESSOR:

CITY OF GAINESVILLE

ATTEST:

Kurt Lannon, Clerk of the Commission

By: _____
Craig Lowe, Mayor

Approved as to Form and Legality:

Nicolle M. Shalley, City Attorney

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, who is

personally known to me, and duly sworn and acknowledged that as such officer, for the uses and purposes set forth and contained in said instrument.

Notary Public
My Commission Expires

LESSEE:

ATTEST:

ALACHUA COUNTY LIBRARY DISTRICT

J. K. Irby, Clerk

By: _____
Chair, Governing Board
Print name: _____

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, who is personally known to me or has produced _____ as identification, and duly sworn and acknowledged that as such officer, for the uses and purposes set forth and contained in said instrument.

Notary Public
My Commission Expires:

Exhibit "A" to Memorandum of Lease

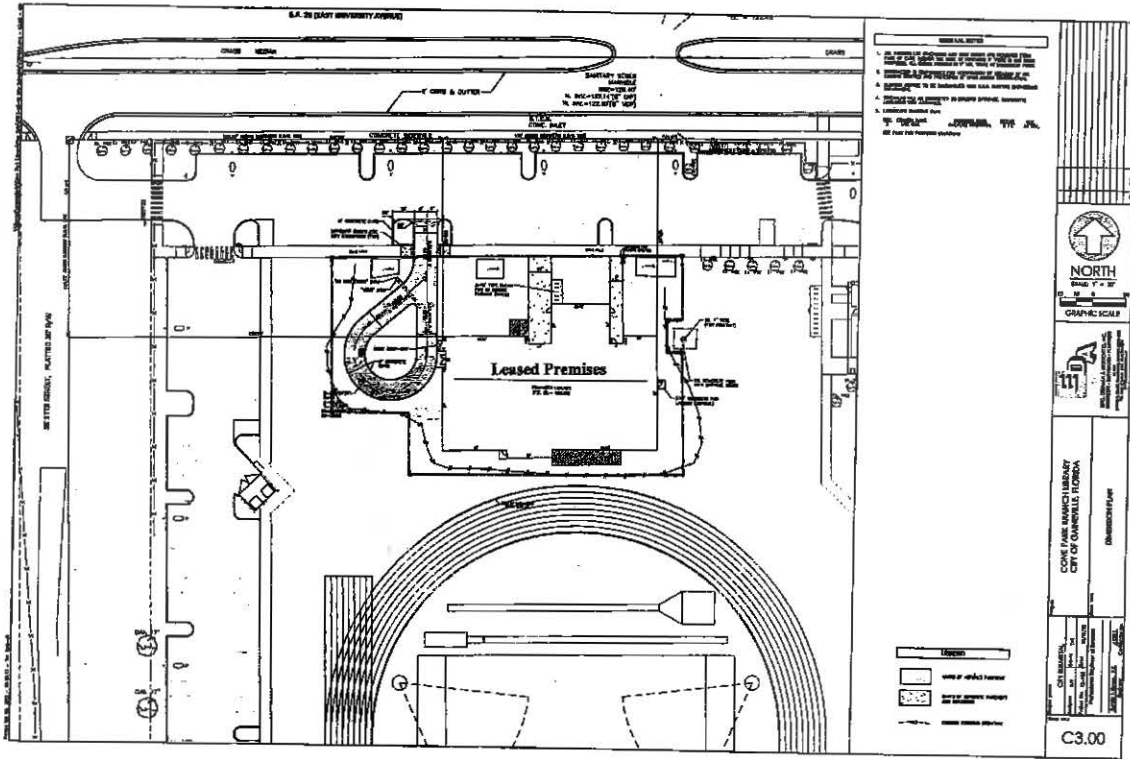


EXHIBIT "C"

Rent Schedule

Base Rent: NONE

Taxes: Payable as provided in Section 4 of the Lease

EXHIBIT "D"
Form of Permanent Easement

This Instrument Prepared By:
Sam Bridges, Land Rights Coordinator
City of Gainesville – Public Works # 58
Post Office Box 490
Gainesville, Florida 32627

Section Township Range
Tax Parcel

INGRESS and EGRESS EASEMENT

THIS EASEMENT, made this _____ day of _____, 2013, by the City of Gainesville, Florida, a municipal corporation existing under the laws of the State of Florida with its principal place of business at Post Office Box 490, Gainesville, Florida 32627, herein after referred to as GRANTOR, and ALACHUA COUNTY LIBRARY DISTRICT, an Independent Special District, whose post office address is 401 East University Avenue, Gainesville, Florida 32601, herein after referred to as GRANTEES.

WITNESSETH

That the said GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) to it in hand paid by GRANTEES, receipt of which is hereby acknowledged, has given and granted, and by these presents does give and grant unto the GRANTEES, its successors and assigns, an easement for the purpose of ingress/egress and parking over, upon, and through the following described property in Alachua County, Florida, to wit:

Description

As to the parking, the Grantee shall have exclusive use of the 50 parking spaces contained within the area depicted as the Easement Area on the attached Exhibit "A" during the hours that the library is open to the public. To that end, the Grantee may mark, post or otherwise identify the parking spaces as reserved for library patrons during public operating hours.

As to ingress and egress, the Grantee shall have non-exclusive use of the paved drive lanes and entrances/exits to the park in order to access its parking spaces and the Leased Premises.

Grantor shall maintain the easement areas, exclusive of signs and markings installed by Grantee.

TO HAVE AND TO HOLD the same unto the said GRANTEES, its successors and assigns, during the term of the Lease between the Grantor and Grantee, a Memorandum of which is recorded in the Public Records of Alachua County, Florida.

IN WITNESS WHEREOF, the said GRANTOR has caused these presents to be executed under seal on the day and year aforesaid.

Signed, sealed and delivered
in the presence of:

CITY OF GAINESVILLE, FLORIDA

Witness Signature
Print Name: _____

Craig Lowe, Mayor

Witness Signature
Print Name: _____

ATTEST: _____
Kurt M. Lannon
Clerk of the Commission

**STATE OF FLORIDA
COUNTY OF ALACHUA**

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Craig Lowe and Kurt M. Lannon, the Mayor and Clerk of the Commission, respectively, of the City of Gainesville, Florida, a municipal corporation, who are personally known to me and duly sworn, acknowledged that as such officers, and pursuant to authority from said corporation, they executed the foregoing instrument and affixed the corporate seal for and on behalf of said corporation, as its act and deed, and for the uses and purposes set forth and contained in said instrument.

Notary Public, State of Florida
Print Name: _____
My Commission Expires:

Exhibit "A" to Easement

