

## **SPACE USE AGREEMENT**

This Space Use Agreement (“Agreement”) is entered into this 18th day of May, 2009, between the ANN ARBOR DISTRICT LIBRARY, a Michigan district library and public body corporate (“Library”) and the FRIENDS OF THE ANN ARBOR DISTRICT LIBRARY, a Michigan nonprofit corporation (“FAADL”).

### **RECITALS**

A. The Library is organized as a district library pursuant to the Michigan District Library Establishment Act, MCL 397.171 *et seq.*, and operates the Main Library located at 343 S. Fifth Street, Ann Arbor, Michigan (“Main Library”) in addition to multiple branch Library locations within its library district.

B. The FAADL was organized as a Michigan nonprofit corporation effective May 22, 1953, and is recognized by the Internal Revenue Service as an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. The FAADL is not owned, operated, or legally related to the Library.

C. Pursuant to its corporate charter, the FAADL engages in sales of books for fundraising purposes and for the benefit of the Library. Book sales are conducted in space designated by the Library within the Main Library and branch Library locations consistent with the terms and conditions of an Interim Use Agreement dated November 24, 2006, between the Library and the FAADL.

D. By execution of this Agreement, the Library and FAADL intend to terminate the Interim Use Agreement and provide for use of space by the FAADL for the purposes stated above under the terms and conditions provided in this Agreement.

### **AGREEMENT**

#### **I. DESIGNATION AND USE OF PREMISES.**

1.1 Premises. The Library will make available to FAADL throughout the term of this Agreement space located in the basement of the Main Library building as designated on the floor plan attached to, and incorporated in, this Agreement as Exhibit A, and space in the branch Library locations as determined by the Library to be available and appropriate to FAADL book sales (the “Premises”). The Library may designate alternative space for FAADL book sales in the Main Library and branch Library locations upon reasonable notice. The FAADL may access the Premises only during hours that the Main Library and branch Library locations are open to the public and will comply with Library policies as to entry procedures and security. The Library retains all property rights and interests in and to the Premises. The Premises will not include access to any telephone or internet lines of the Library. The FAADL will maintain at its own

expense a telephone line, telephone number, internet line and internet website for its operations that are separate from those of the Library.

1.2 Permitted Uses. The FAADL may use the Premises for book sales and activities integral to such sales during hours that the Library is open to the public. The FAADL will bear full legal responsibility for any and all of its operations on the Premises.

1.3 Obligation to Maintain Premises Free from Hazards. The FAADL will keep the Premises in a neat, orderly condition and free from hazards at all times. In particular, entrances to and passageways through the Premises will be maintained free of obstacles or debris that could impede emergency access to, and egress from, the area.

1.4 No Alterations or Signage. The FAADL may not alter the Premises or place signs on or in the Premises unless approved by the Library.

1.5 Compliance; Security; Nondiscrimination. In the use of the Premises, FAADL will comply with all laws, codes, and regulations, including requirements of state and local fire safety codes or ordinances applicable to the Premises, state and federal requirements under the Americans With Disabilities Act and other laws that address nondiscrimination and access to public facilities, and compliance with all applicable policies and procedures of the Library with respect to use of the Premises. Specifically, FAADL employees, volunteers and agents (“FAADL Agents”) will comply with all Library policies and procedures for security and safety, including compliance with fire drills and emergency evacuation procedures. FAADL Agents will not bring items, materials or substances onto Library premises that are prohibited under Library policies. The Library will provide FAADL with copies of pertinent policies and procedures relevant to this Agreement. In the use of the Premises, the FAADL will not discriminate against any person because of race, color, religion, national origin, ancestry, age, sex, sexual orientation, height, weight, marital status, veteran status, physical or mental disability, or other factors prohibited by applicable law.

1.6 Name Badges. FAADL Agents will wear name badges on the Premises that include the name of the individual and the FAADL. FAADL Agents will not hold themselves out as agents or employees of the Library.

1.7 Library Right of Access. Library will have the right to enter the Premises at any time for any purpose, including to inspect the Premises or for the purpose of making repairs, additions, or alterations. If the Library determines that repairs or maintenance activities are reasonably likely to disrupt FAADL’s use of the Premises, Library will provide three (3) days advance notice of such repairs or maintenance. Advance notice to FAADL will not be required for an emergency repairs or maintenance determined by Library to be necessary for safe use of the Premises or the Library building as a whole. If Library observes, in its reasonable judgment, any unsafe practices or operations by FAADL or noncompliance with applicable laws or Library policies, Library will notify FAADL within twenty-four (24) hours. FAADL will investigate the practices or operations identified in the notice within twenty-four (24) hours and will either (i)

notify Library that all practices and operations are in compliance, including the reasons for such conclusions; or (ii) notify Library of any corrective action to be taken by FAADL and the timeframe for completing the correction.

## **2. OTHER OBLIGATIONS OF FAADL.**

2.1 Operational Issues. The FAADL agrees that, as of the date of execution of this Agreement and for the entire term this Agreement remains in effect, it will:

(a) Be a Michigan nonprofit corporation in good standing and recognized as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

(b) Hold a current Michigan Charitable Solicitations License;

(c) Have in effect policies and procedures for handling cash and other donations;

(d) Appoint or elect a full slate of directors and officers and promptly fill any vacancies in such positions;

(e) Obtain audited financial statements for each fiscal year ended during the term of this Agreement, including an auditor opinion that the financial statements fairly represent, in all material respects, the financial position of the FAADL and the changes in net assets and cash flows for the year then ended, in conformity with accounting principles generally accepted in the United States of America; and

(f) Timely file its IRS Form 990 and post that, the IRS exempt organization determination letter, and its audited financial statements on its website for public disclosure and inspection purposes.

2.2 Sales Taxes on Book Sales; Liens. FAADL will be solely responsible for determining the amount of sales tax due on book sales on the Premises, any exemptions from sales tax that may apply to such sales, and for compliance with any and all applicable sales tax or other tax laws pertinent to its operations. If sales taxes are due to taxing authorities for book sales by FAADL on the Premises, the FAADL will be solely responsible for remitting any sales tax collected to applicable taxing authorities. FAADL will keep any property located on the Premises free of liens and encumbrances including any state or federal tax liens.

2.3 Insurance. During the term of this Agreement, the FAADL will maintain in effect a comprehensive general liability insurance policy that names the Library as an additional insured.

### **3. OBLIGATIONS OF AADL.**

3.1 Maintenance; Repair; Janitorial Services. Library will maintain the Premises in good condition and repair. Library will be responsible for routine cleaning and janitorial services for the Premises, including basic trash disposal. Library is not responsible for disposal of unwanted books or other materials of the FAADL. The Library will arrange for, and incur the cost of, recycling services for books or other materials designated for recycling by the FAADL, unless such costs increase by more than 25% of the recycling costs being paid by the Library as of the Effective Date. If the Library incurs or will incur recycling costs related to FAADL materials in excess of the foregoing amounts, the FAADL will either reimburse the Library for such costs or, at the Library's request, make its own arrangements for recycling services. Library will not be responsible for loss of items or property of FAADL or FAADL Agents that are deposited in or near trash containers, stored on floors without proper labeling or that could, in the reasonable judgment of Library, be mistaken as refuse.

3.2 Utilities. Library will provide utilities for the Premises including electricity, heat and water. Utilities will not include telephone or internet lines or access, which will be the responsibility of FAADL as provided in Section 1.1.

3.3 Insurance. During the term of this Agreement, the Library will maintain in effect a comprehensive general liability insurance policy that names the FAADL as an additional insured.

3.4 Library Point of Sale Service. The Library will provide point of sale service, using Library personnel and at Library's cost, at all locations for sales of FAADL material available on bookcarts for purchase by the public. The Library will provide monthly reconciliation and reimbursement to FAADL for sales from bookcarts at the Main Library and branch Library locations.

### **4. TERM AND TERMINATION.**

4.1 Term. This Agreement will become effective on the date shown on page one (the "Effective Date") and will remain in effect for a one (1) year term. The parties may renew this Agreement for successive one (1) year terms upon mutual written consent.

4.2 Termination. This Agreement may be terminated without cause by either party upon seven (7) days written notice of termination to the other party.

4.3 Additional Remedies for Material Breach. Upon a material breach of this Agreement by the FAADL, as determined in the sole discretion of the Library, the Library may suspend book sales by the FAADL on the Premises until such time that the breach is cured to the reasonable satisfaction of the Library or this Agreement is terminated. The Library's right to suspend book sales under this Section will be in addition any other rights or remedies the Library has under this Agreement, including termination. A material breach of this Agreement

will include, without limitation, a material failure by the FAADL to comply with all operational requirements applicable to it under Section 2.1 of this Agreement.

4.4 FAADL Obligations on Termination. In the event this Agreement is terminated by either party, the FAADL will remove all books and other property from the Premises within thirty (30) days after the effective date of termination. Should the FAADL fail to do so, the Library may remove FAADL books and property and FAADL will reimburse the Library its reasonable and necessary costs.

## 5. GENERAL PROVISIONS.

5.1 Independent Contractors. The parties acknowledge that FAADL is an independent contractor of Library. In no event will FAADL or any FAADL Agents be deemed a joint venture party, partner, employee, or agent of Library by virtue of this Agreement. Library will exercise no control over the manner or method by which FAADL conducts its operations on the Premises provided that FAADL's operations are in compliance with this Agreement.

5.2 Entire Agreement. This Agreement supersedes any and all other agreements related to use of the Premises, either oral or written, between the parties hereto and contains all the covenants and agreements between the parties with respect to its subject matter.

5.3 Amendments. The terms of this Agreement may not be amended or modified except by a further written statement signed by the parties specifically referencing this Agreement.

5.4 Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of Michigan.

5.5 Books, Documents, and Records Availability. FAADL will make its books and records available for inspection by Library if review of such books and records may be required, in the reasonable judgment of Library, to determine compliance with any terms or conditions herein. FAADL will make the requested books and records available for inspection by Library within ten (10) days of receipt of a request for access.

5.6 Successors/Assigns. This Agreement may not be assigned by a party hereto without the express written consent of the other party.

5.7 No Third Party Beneficiaries. There are no intended third party beneficiaries of this Agreement.

5.8 Waiver or Rights. The failure of a party to exercise its rights in the event of a breach of this Agreement will not constitute a waiver of any rights with respect to that or any subsequent breach.

In WITNESS WHEREOF, the parties hereto, or their duly authorized officers or agents, have executed, sealed, and delivered this Agreement intending to be legally bound.

ANN ARBOR DISTRICT LIBRARY, a Michigan district library and public body corporate

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

Print Name: Rebecca Head

Title: President, AADL Board of Trustees

Date: 5/22/2009

FRIENDS OF THE ANN ARBOR DISTRICT LIBRARY, a Michigan nonprofit corporation

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

Print Name: Pat McDonald

Title: President, FAADL Board

Date: 5/22/2009