

RESOLUTION NO. 2009-152

SPONSOR Mr. Pry

DATE April 27, 2009

COMMITTEE Planning

A Resolution confirming an award by the Board of Control of a real property lease of approximately 410 square feet of space on the east side of the atrium on the fourth floor of the Ohio Building, 175 South Main Street, Akron, Ohio, for a five-year period from 4/1/09 to 3/31/14, with Jo Ann Montgomery dba Jo Ann's Coffee Corner, per attached Exhibit A, for \$146.92 per month plus repayment for improvements made by the County in the amount of \$66.17 per month, in District 4, for the Executive's Department of Administrative Services, and declaring an emergency.

WHEREAS, the Board of Control, at its meeting held April 1, 2009, has awarded a lease for the aforementioned space subject to confirmation by County Council; and,

WHEREAS, County Council has determined by reviewing all pertinent information that the lease is necessary and in the best interest of the County of Summit;

NOW, THEREFORE, BE IT RESOLVED by the Council of the County of Summit, State of Ohio, that:

SECTION 1

The award by the Board of Control of a real property lease of approximately 410 square feet of space on the east side of the atrium on the fourth floor of the Ohio Building, 175 South Main Street, Akron, Ohio, for a five-year period from 4/1/09 to 3/31/14, with Jo Ann Montgomery dba Jo Ann's Coffee Corner, for \$146.92 per month plus repayment for improvements made by the County in the amount of \$66.17 per month, in District 4, is hereby confirmed, and the County Executive is authorized to execute such a lease.

SECTION 2

This Resolution is hereby declared an emergency in the interest of the health, safety, and welfare of the citizens of the County of Summit and for the further reason of immediately providing such a lease.

SECTION 3

Provided this Resolution receives the affirmative vote of eight members, it shall take effect immediately upon its adoption and approval by the Executive; otherwise, it shall take effect and be in force at the earliest time provided by law.

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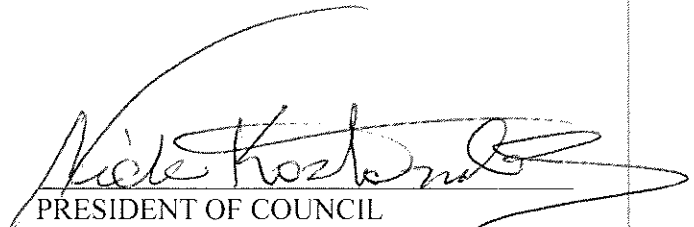
SECTION 4

It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

INTRODUCED April 13, 2009

ADOPTED April 27, 2009


CLERK OF COUNCIL


PRESIDENT OF COUNCIL

APPROVED April 27, 2009


EXECUTIVE

ENACTED EFFECTIVE April 27, 2009

Voice Vote: 9-0-1 YES: Comunale, Crossland, Feeman, Kostandaras, Poda
Prentice, Rodgers, Schmidt, Smith ABSTAIN: Crawford ABSENT: Shapiro

COUNTY OF SUMMIT
AND
JO ANN MONTGOMERY

09-152

LEASE OF SPACE IN FOURTH FLOOR ATRIUM, OHIO BUILDING

THIS LEASE ("Lease") is entered into this ____ day of _____, 2009 at Akron, Ohio by and between COUNTY OF SUMMIT, OHIO ("Landlord"), having its principal place of business located at 175 S. Main Street, Executive's Office, Akron, Ohio 44308 and the Jo Ann Montgomery, d/b/a Jo Ann's Coffee Corner ("Tenant"), having its principal place of business located at 80 West Bowery Street, Suite 105, Akron, Ohio 44308.

WHEREAS, Landlord desires to lease the Premises defined below to Tenant and Tenant desires to lease said Premises from Landlord;

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth to be performed by the parties, Landlord agrees to lease the following described Premises to Tenant on the terms and conditions as set forth in this Lease:

1. PREMISES. The "Premises" shall consist of approximately 410 sq. feet in a room located on the east side of the atrium on the 4th floor of the Ohio Building, located at 175 South Main Street, Akron, Ohio.
2. TERM. This Lease shall be for a period of **five (5) years** commencing on April 1, 2009 and terminating on March 31, 2014 ("Term"); thereafter unless sooner terminated as provided herein.
3. RENT. For the Term of this Agreement, Tenant agrees to pay Landlord, without demand, at its above-referenced address, as compensation for the Use for the Premises, **\$146.92 per month** for the first year in the Term of the Lease. For each year thereafter, the rent shall increase by the Consumer Price Index change for the previous calendar year, but not greater than 5% or less than 0%. Rent shall be due by the first day of each month. All payments to Landlord under this Lease shall be directed to County of Summit, Department of Finance and Budget, 175 South Main St., 7th Floor, Akron, OH 44308.
4. PAYMENT FOR IMPROVEMENTS TO PREMISES. Tenant acknowledges that Landlord has made certain improvements to the Premises for the specific benefit of Tenant and her Use of the Premises. The total cost of these improvements to the Landlord was \$3,503.56. Tenant agrees to repay Landlord for the cost of these improvements at an interest rate of 5% per year, in the amount of **\$66.17 per month** over the Term of this Lease. This amount shall be in addition to the Rent payment stated in paragraph 3 of this Lease. Should this Lease be terminated for any reason prior to the end of the Term, the Tenant shall pay the remaining unpaid balance of the improvement costs to the Landlord.
5. USE. The Premises shall be used by the Tenant to operate a coffee stand, in which Tenant may offer for sale non-alcoholic beverages, breakfast foods, snacks and lunches to employees of the Landlord and to the public between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, legal holidays exempted. Tenant may choose a lesser amount of hours. Tenant shall not use the Premises for any other purpose.

6. MAINTENANCE. Tenant shall keep the Premises in good condition and repair, and shall keep all equipment present on the Premises in clean condition. Tenant shall comply with all health and police regulations applicable or affecting the interior of the Premises.
7. UTILITIES. Landlord shall be responsible for utilities for the Premises, including electric, heating, water and sewer.
8. SECURITY. Tenant shall be solely responsible for securing her equipment and merchandise. Landlord disclaims, and Tenant waives, any liability for loss or damage of equipment, merchandise of money of the Tenant related to this Agreement.
9. REMODELING, REDECORATING, ALTERATIONS. Tenant shall not make any alterations or additions, including remodeling or signage, without first obtaining Landlord's prior written consent, which may be withheld at Landlord's sole discretion. Tenant agrees not to permit the filing of any mechanic's liens on the Premises. Any such alterations or additions to the Premises shall revert to the Landlord at the termination of this Lease or any subsequent renewal.
10. INSPECTIONS / PERMITS. Tenant will comply with all laws, rules, ordinances, health codes, zoning requirements and other requirements relating to the occupancy of buildings, arrange for all necessary inspections and secure all necessary permits to assure the propriety and legality of the Tenant's Use of the Premises.
11. LIABILITY. Landlord shall not be responsible for any damages occasioned by reason of the Tenant's use or occupation of the Premises. Landlord shall not be responsible for failure to keep the Premises in repair, unless notice of the need for repairs has been given Landlord and a reasonable time has elapsed and Landlord has failed to make such repairs. All personal property belonging to the Tenant or to any other person, located in or about the building or Premises, shall be there at the sole risk of the Tenant or such other person, and neither the Landlord nor the Landlord's agents shall be liable therefore.
12. DAMAGE TO BUILDING. In the event the leased Premises are destroyed or rendered untenable by fire, storm, earthquake or other casualty, this Lease shall terminate. Should the Premises be rendered partially untenable, the Tenant and Landlord shall negotiate occupancy for the remainder of the Lease term or either party may terminate the Lease upon written notice to the other.
13. HAZARDOUS OR UNLAWFUL USE. Tenant shall not use or occupy any part of the Ohio Building or Premises for hazardous, unlawful or improper purposes. All parties agree that they will not violate any local, state or federal laws in operation and Use of the Premises.
14. LANDLORD'S ACCESS. Landlord, including its agents, shall have free access to the Premises at any time for any purpose with twenty-four (24) hour advance notice to the Tenant, except such notice is not required for an emergency where time for such notice is not possible.
15. ASSIGNMENT. Tenant shall not sublet or assign any interest in this Lease without the prior written consent of the Landlord, which may be withheld at the sole discretion of Landlord.
16. RETURN OF BUILDING AND PROPERTY. Tenant agrees to surrender the Premises at the termination of the Term in as good condition as when the Premises was accepted, ordinary wear excluded. At least sixty (60) days prior to Tenant's vacating the Premises, Landlord shall inspect the Premises. In the event that damage beyond ordinary wear occurred, Tenant agrees to have said damage repaired or replaced to Landlord's satisfaction prior to Tenant's vacating the Premise. Upon Tenant's failure to make such repairs or replacements, Landlord shall cause such work to be completed and Tenant shall be

responsible for such costs. Any of Tenant's property not removed within ten (10) days after the termination of this Lease shall be deemed abandoned by Tenant and at Landlord's election may be treated and/or disposed of by Landlord as its own property without further right of claim thereto by Tenant.

17. INSURANCE. Tenant agrees to provide and maintain throughout the Term of this Lease the following with regard to insurance:

- (i) General Liability insurance with minimum limits of One Million Dollars (\$1,000,000) per occurrence;
- (ii) Worker's Compensation insurance in such limits as prescribed by law;
- (iii) County must be named as an Additional Insured with regard to General Liability including a policy endorsement; and
- (iv) 30 days advance written notice of policy cancellation, non-renewal, reduction of limits, or other material modification.

Tenant shall provide County with a Certificate of Insurance and Policy Endorsement naming County as an additional insured upon execution of this Lease.

18. INDEMNIFICATION. Tenant agrees to defend and indemnify the Landlord and its elected officials, agents and employees against all claims, actions, demands, judgments, settlements, damages, liabilities, losses, and costs of any kind, including but not limited to court costs and reasonable fees of attorneys and experts, arising from or related to any of the following by Tenant or its officers, employees, contractors, agents, licensees or invitees: (1) use of the Premises and the fourth floor atrium of the Ohio Building, the parking area and surrounding walkways, and any area of the Ohio Building; (2) negligence; (3) willful misconduct; (4) malicious acts or omissions.

19. LANDLORD'S RIGHT TO RELOCATE TENANT. Landlord shall have the right, upon 30 days notice to the Tenant, to relocate the Tenant within the Ohio Building at 175 South Main Street, Akron, and substitute the Premises for other space in the Ohio Building. If such space is not the same in area as the Premises, the Rent shall be prorated accordingly.

20. NOTICE. Any notice required hereunder shall be sent to the parties at the following addresses:

Landlord:	County of Summit	Tenant: Jo Ann Montgomery
	Attn: Director of Law	80 West Bowery Street, Suite 105
	175 South Main Street	Akron, OH 44308
	Akron, OH 44308	

21. TERMINATION. This Lease shall be terminated at the expiration of the Term, or earlier upon a default as provided herein.

22. EVENTS OF DEFAULT. The occurrence of any one of the following events shall constitute a default under this Lease:

- (i) Tenant fails to pay any Rent, additional rent, capital improvement cost reimbursement, or any other sum of money when due as required under this Lease, time being of the essence;
- (ii) Tenant's use or occupancy of the Premises disrupts or interferes with the other building occupants;
- (iii) Tenant assigns or subleases this Lease without the express written consent of Landlord;
- (iv) Tenant fails to maintain the insurance as required under this Lease;

- (v) Tenant abandons the Premises;
- (vi) Any execution, attachment or other order of court shall be issued against the interest of Tenant in this Lease and shall continue for a period of 30 days after notice;
- (vii) Any voluntary or involuntary petition for bankruptcy; or
- (viii) Tenant fails to perform any of her obligations under this Lease. If Tenant defaults in any monetary obligation, Landlord may terminate this Lease immediately. If the Tenant defaults in any non-monetary obligation, then Tenant must cure such default within 3 days of notice of such default otherwise Landlord may terminate this Lease after 3 days notice is provided.

23. REMEDIES OF LANDLORD. Upon the occurrence of any default by Tenant, Landlord shall have any or all of the following rights and remedies in addition to those rights and remedies at law of equity. All remedies shall be cumulative and non-exclusive.

- (i) Landlord shall have the right but is not obligated to cure any such default on behalf of Tenant, in which event Tenant shall pay to Landlord, as additional rent, all costs and expenses incurred by Landlord in curing such default, including reasonable attorneys' fees, together with the next monthly installment of Rent.
- (ii) Landlord may terminate this Lease immediately upon notice of such termination to Tenant. Upon termination of this Lease, the Landlord shall have the right to accelerate Rent and demand immediately all amounts due or owing to the Landlord. Landlord agrees to use its best efforts to re-let the Premises to mitigate the amount paid by Tenant for the accelerated Rent.

24. RULES AND REGULATIONS. Tenant and Tenant's agents, employees and invitees shall faithfully observe and strictly comply with any reasonable rules and regulations as Landlord may adopt.

25. WAIVERS. No waiver of any default and/or breach of this Lease shall be held to be a waiver of any other default and/or breach.

26. EXECUTION. This Agreement and any documents incorporated by reference constitute the entire agreement of the parties. The Landlord and its agents have not made any representations or promises except as expressly set forth herein. This Agreement shall not be amended or modified except by the written consent of both parties.

IN WITNESS WHEREOF, the parties hereby sign this Agreement as of the date set forth above:

JO ANN MONTGOMERY, d/b/a
JO ANN'S COFFEE CORNER

By: _____

Title: _____

COUNTY OF SUMMIT, OHIO

By: _____
Russell M. Pry, Executive Date

APPROVED AS TO FORM:

Richard E. Dobbins, Director
Department of Law, County of Summit, Ohio

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STATE OF OHIO)
)
COUNTY OF SUMMIT) ss:

Before me, a Notary Public, in and for said County and State, personally appeared Russell M. Pry, the County of Summit Executive, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed in his official capacity on behalf of the County of Summit.

In Testimony Whereof, I have hereunto set my hand and official seal at Akron, Ohio this ____ day of _____, 200__.

Notary Public

STATE OF OHIO)
)
COUNTY OF SUMMIT) ss:

Before me, a Notary Public, in and for said County and State, personally appeared Jo Ann Montgomery, who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed.

In Testimony Whereof, I have hereunto set my hand and official seal at Akron, Ohio this ____ day of _____, 200__.

Notary Public