

LEASE AGREEMENT
BETWEEN
TOWN OF LOS GATOS
AND
FRIENDS OF THE LOS GATOS PUBLIC LIBRARY

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**LEASE AGREEMENT
BETWEEN
TOWN OF LOS GATOS
AND
FRIENDS OF THE LOS GATOS PUBLIC LIBRARY**

This lease agreement (herein "Lease") is made and entered into _____, 2024, by and between the Town of Los Gatos, a California municipal corporation (herein "Town") and Friends of the Los Gatos Public Library, a California nonprofit corporation (herein "Lessee"). Town and Lessee may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Lease." The Town Manager serves as Contract Administrator for this Lease on behalf of the Town Council.

In consideration of these recitals and the following covenants, terms, and conditions, Lessee and Town mutually agree as follows:

LEASE PROVISIONS

1. PREMISES.

Town hereby leases to Lessee, certain real property located in the Town of Los Gatos, County of Santa Clara, State of California, commonly known as 108 E. Main Street (herein the "Premises") and more particularly described in Exhibit A attached hereto and incorporated herein by reference. The Premises consists of approximately one thousand eight hundred and sixty (1,860) square feet of space for retail book sales. Unless specifically provided, Lessee accepts the Premises "as-is" on the date of execution of this Lease.

2. TERM.

2.1 Original Term. The term of this Lease shall be for five (5) years, commencing on _____, 2024 ("Delivery Date") and ending on April 30, 2029. Lessee shall, at the expiration of the term of this Lease, or upon its earlier termination, surrender the Premises in as good condition as it is now at the date of this lease. The Parties expect reasonable wear and tear.

2.2 Option to Extend. Provided Lessee is not in default hereunder, either at the time of exercise or at the time the extended term commences, Lessee shall have the option to extend the initial term of this Lease for two (2) additional periods of five (5) years ("Option Period") with the same terms, covenants and conditions provided herein by letter agreement. Lessee's option shall be exercised by Lessee providing Town with request for an extension in writing no less than sixty (60) days prior to the expiration of the then current term.

Early Termination by Town. If Town in its sole discretion determines that it requires the Premises for any public purpose, Town may terminate this Lease upon ninety (90) days written notice.

3. **RENT.**

3.1 **Base Rent.** The rent to be paid by Lessee shall be in the amount of One Dollar (\$1.00) per year.

3.2 **Payment Date.** Rent shall be payable on the first day of ____ commencing on the Delivery Date, and each ____ 1st thereafter during the term of the Lease and any Lease extension at Town Hall Finance Department.

4. **FUNDING COMMITMENT.**

Lessee shall be obligated to contribute a minimum of \$35,000 to Town on an annual basis based on proceeds from the Lessee's efforts to support the Town of Los Gatos Public Library as established in Lessee's Library Trust Fund account. All funds paid by the Friends of the Los Gatos Public Library per the funding commitment will be used as enhancements to the Library budget and are not intended to offset the general fund contributions to the Library budget. All payments shall be made payable annually to the Town the day after the second Town Council meeting in August. The Town will provide an opportunity for the Friends of the Los Gatos Public Library to ceremonially present the contribution at a regular meeting of the Town Council in August.

5. **USE OF PREMISES AND OPERATING HOURS.**

5.1 **Required Uses.** Throughout the term of this Lease, Lessee shall provide the following uses, services and activities ("Required Uses"):

5.1.1 Uses consistent with Lessee's business purposes which includes retail sales of used and new books, ancillary items (cards, t-shirts, paper, and similar products), and museum merchandise.

5.1.2 1,860 square feet of space on the upper level of the old Town of Los Gatos Library located at 108 Main Street, Los Gatos, CA, as shown on Exhibit A.

5.1.3 Lessee may request to reserve the conference room once a month in the new public library and the outdoor Town deck adjacent to Lessee's space in accordance with the Town's Facility Use Policy

5.2 **Hours of Operations.**

5.2.1 **Public Hours.** Lessee may set reasonable hours of operation.

5.2.2 Special Events. Lessee shall be obligated to apply for a Special Events Permit in accordance with Town rules and regulations and pay all associated costs and fees for any event that meets the criteria set forth by Town Code. Alcohol (beer & wine only) may be allowed in conjunction with approval of a Special Events Permit, subject to all regulations required by the Los Gatos Police Department. For those events that do not meet the criteria requiring a Special Event Permit, but do impact parking at the Civic Center, Lessee shall coordinate with the Town Manager's office to avoid conflicts during business hours or when Town events or meetings are scheduled.

5.3 Prohibited Uses. Lessee shall not use Premises for any purpose not expressly permitted hereunder. Lessee shall not create, cause, maintain or permit any nuisance or waste in, on, or about the Premises, or permit or allow the Premises to be used for any unlawful or immoral purpose. Lessee shall not do or permit to be done anything in any manner which unreasonably disturbs the users of the Town Property or the occupants of neighboring property. Specifically, and without limiting the above, Lessee agrees not to cause any unreasonable odor, noise, vibration, power emission, or other item to emanate from the Premises. No materials or articles of any nature shall be stored outside upon any portion of the Premises. Lessee will not use Premises in a manner that increases the risk of fire, cost of fire insurance or improvements thereon. No unreasonable sign or placard shall be painted, inscribed or placed in or on said Premises; and no tree or shrub thereon shall be destroyed or removed or other waste committed of said Premises. No bicycles, motorcycles, automobiles or other mechanical means of transportation shall be placed or stored anywhere on the Premises. No repair, overhaul or modification of any motor vehicle shall take place on the Premises or the street in front of said Premises. Lessee, at his/her expense, shall keep the Premises in as good condition as it was at the beginning of the terms hereof, except damage occasioned by ordinary wear and tear, and except damage to the roof, sidewalks and underground plumbing, which is not the fault of Lessee.

5.4 Condition, Use of Premises. Town makes no warranty or representation of any kind concerning the condition of the Premises, or the fitness of the Premises for the use intended by Lessee, and hereby disclaims any personal knowledge with respect thereto, it being expressly understood by the parties that Lessee has personally inspected the Premises, knows its condition, finds it fit for Lessee's intended use, accepts it as is, and has ascertained that it can be used exclusively for the limited purposes specified in Section 5.1.

5.5 Parking. Town will provide Olive Zone parking to Lessee for their volunteers.

5.6 Coordination with Town. Lessee shall schedule, attend, and fully participate in annual meetings with Town Manager and/or Manager's designee to address any and all conditions of this Agreement or any other matter which arises in conjunction with the use of the Premises. Lessee shall also be required to participate in Town Emergency Preparedness training and exercises.

6. UTILITIES AND OPERATING EXPENSES.

6.1 Lessee Obligations. Lessee at Lessee's sole expense shall fully and promptly pay for all expenses associated with the operation of the Premises, including but not limited to the furnishing of gas, water, sewer, electricity, telephone service, garbage pickup and disposal, other public utilities and custodial service. Lessee shall be obligated to pay a pro-rated share based on square footage for gas, water, sewer, electricity, garbage service and other public utilities provided by or through the Town. Lessee shall be obligated to pay their own direct costs for telephone, technology, audio-visual, custodial or other specialized services, including any initial costs for those services. Town shall maintain all exterior landscaping.

6.2 Custodial Services. Lessee at Lessee's sole expense shall fully maintain and pay for all custodial services to maintain the interior premises in a clean and safe manner. All vendors for custodial services shall be bonded, insured, and the Town named as an additional insured. Proof of bond and insurance including the additional insured certificate shall be provided to Town prior to any custodial services being performed.

7. TAXES.

7.1 Payment of Real Property Taxes. Town shall pay Lessee's share of all real property taxes which become due and payable.

7.2 Revenue and Taxation Code. Lessee specifically acknowledges it is familiar with section 107.6 of the California Revenue and Taxation Code. Lessee realizes that a possessory interest subject to property taxes may be created, agrees to pay any such tax, and hereby waives any rights Lessee may have under said California Revenue and Taxation Code section 107.6.

7.3 Personal Property Taxes. Lessee shall pay before delinquent, or if requested by Town, reimburse Town for, any and all taxes, fees, and assessments associated with the Premises, the personal property contained in the premises and other taxes, fees, and assessments regarding any activities which take place at the Premises. Lessee recognizes and understands in accepting this Lease that its interest therein may be subject to a possible possessory interest tax that Town or County may impose on such interest and that such tax payment shall not reduce any rent due Town hereunder and any such tax shall be the liability of and be paid by Lessee.

8. MAINTENANCE.

8.1 Town and Lessee Responsibilities. Lessee at Lessee's expense, shall perform all interior maintenance and repairs, including all painting, necessary to keep the Premises in good order, repair, and condition, and shall keep the Premises in a safe, clean, and sanitary condition to the complete satisfaction of Town, and in compliance with all applicable laws, throughout the term of this Lease. In addition, Lessee shall maintain, at Lessee's expense, all equipment, furnishings and trade fixtures upon the Premises required for the maintenance and operation of public services of the type to be conducted pursuant to this Lease. Routine

interior plumbing and electrical maintenance (e.g., plugged toilets/sinks, faulty switches/lights) will be the responsibility of the Lessee. Town shall be responsible for the routine maintenance and repair of the exterior structure of the Premises and main support systems, including roof repair, exterior painting and structural repairs, excluding any maintenance or repairs resulting from Lessee's actions or activities. Windows broken or cracked will be the responsibility of the Town, excluding broken windows resulting from Lessee's actions or activities.

8.2 Waiver of Civil Code. Lessee expressly waives the benefit of any statute now or hereinafter in effect, including the provisions of sections 1941 and 1942 of the Civil Code of California, which would otherwise afford Lessee the right to make repairs at Town's expense or to terminate this Lease because of Town's failure to keep Premises in good order, condition and repair. Lessee further agrees that if and when any repairs, alterations, additions or betterments shall be made by Lessee as required by this paragraph, Lessee shall promptly pay for all labor done or materials furnished and shall keep the Premises free and clear of any lien or encumbrance of any kind whatsoever. If Lessee fails to make any repairs or perform any maintenance work for which Lessee is responsible within a reasonable time (as determined by the Town Manager in the Town Manager's sole discretion) after demand by the Town, Town shall have the right, but not the obligation, to make the repairs at Lessee's expense; within ten (10) days of receipt of a bill, Lessee shall reimburse Town for the cost of such repairs, including a fifteen percent (15%) administrative overhead fee. The making of such repairs or performance of maintenance by Town shall in no event be construed as a waiver of the duty of Lessee to make repairs or perform maintenance as provided in this Section.

8.3 Maintenance of Common Areas. Town shall maintain or cause to be maintained, including repair and replacement as necessary, the exterior grounds, exterior shared deck, and the parking lot adjacent to the Premises. If Lessee uses the shared deck for activities or a special event, Lessee shall promptly remove all structures, fixtures, accessories, decorations and trash associated with the activity or event.

9. **CASP INSPECTION.**

Landlord states that the Premises have not been inspected by a Certified Access Specialist (CASp). Accordingly, this notice is provided by Landlord pursuant to California Civil Code Section 1938:

“A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or Landlord may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp

inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of the construction-related accessibility standards within the premises.”

Unless otherwise expressly stated in this Lease and subject to the terms of this Lease: (a) Lessee may elect at any time to perform a CASp inspection of the Premises at Lessee’s expense; (b) any repairs or modifications necessary to correct violations of applicable construction-related accessibility standards within or about the Premises are the responsibility of Lessee; and (c) any construction-related accessibility improvements by Lessee or alterations of or improvements to the Premises are the responsibility of the Lessee.

10. AMERICANS WITH DISABILITIES ACT.

Throughout the term of the Lease, Lessee acknowledges and expressly accepts full responsibility and shall incur all costs and expenses (whether structural or non-structural in nature) for compliance with the requirements of the Americans with Disabilities Act (ADA) and any other law regarding the accessibility of the Premises (and the improvements located or to be located thereon) by disabled individuals. Lessee agrees to release, indemnify, defend and hold harmless Landlord (and its officials, officers, directors, employees, agents, representatives, volunteers, contractors, successors and assigns) from and against any claim, loss, expense or liability arising from Lessee’s failure to fully comply with all such applicable laws and/or this Section 10 (Americans with Disabilities Act).

11. TENANT IMPROVEMENTS.

11.1 Improvements Permitted. Subject to prior written approval of the Town Manager, which shall not be unreasonably withheld, Lessee shall be entitled to install improvements in an efficient and workmanlike manner within the Premises, at no cost to Town. All costs of plans, improvements, and permits shall be the sole responsibility of the Lessee. All structural improvements and improvements in excess of \$5,000 must be approved in writing by the Town Manager.

11.2 Cost of Improvements. All tenant improvements shall be made at Lessee’s sole expense.

11.3 Ownership of Improvements. All improvements constructed, erected, or installed upon the Premises must be free and clear of all liens, claims, or liability for labor or material and shall become the property of Town, at its election, upon expiration or earlier termination of this lease and upon Town's election, shall remain upon the Premises upon termination of this Lease. Title to all free standing equipment, furniture, furnishings, and trade fixtures placed by Lessee upon the Premises shall remain in Lessee’s ownership, and replacements, substitutions and modifications thereof may be made by Lessee throughout the term of this Lease.

11.4 Indemnity for Claims Arising Out of Construction. Lessee shall defend and indemnify

Town against all claims, liabilities, and losses of any type arising out of work performed on the Premises by Lessee, together with reasonable attorneys' fees and all costs and expenses reasonably incurred by Town in negotiating, settling, defending or otherwise protecting against such claims.

11.5 Certificate of Inspection. Upon completion of construction of any building, Lessee shall submit to the Town Manager a Certificate of Inspection, verifying that the construction was completed in conformance with Title 20 of the California Code of Regulations for residential construction, or in conformance with Title 24 of the California Code of Regulations for non-residential construction.

11.6 As Built Plans. Lessee shall provide the Town Manager with a complete set of reproducible "as built plans" reflecting actual construction within or upon the Premises upon completion of any: (i) new construction; (ii) structural alterations; or, (iii) non-structural alterations costing more than \$25,000.

12. ALTERATIONS BY LESSEE

Lessee shall not make any alterations or improvements to the Premises without obtaining the prior written consent of the Town Manager. Lessee may, at any time and at its sole expense, install and place business fixtures and equipment within the Premises, provided such fixtures and installation have been reviewed and approved by the Town Manager.

13. HOLD HARMLESS/INDEMNIFICATION

13.1 Indemnification. To the fullest extent permitted by law, Lessee agrees to protect, defend, hold harmless and indemnify Town, its Town Council, commissions, officers, agents, volunteers, and employees from and against any claim, injury, liability, loss, cost, and/or expense or damage, however same may be caused, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom for which Town shall become legally liable arising from Lessee's negligent, reckless, or wrongful acts, errors, or omissions with respect to or in any way connected with this Lease. Lessee shall give Town immediate notice of any claim or liability hereby indemnified against. This indemnity shall be in addition to the Hazardous Materials indemnity contained in this Lease and shall survive the expiration of or early termination of the Lease Term.

13.2 Waiver of Claims. Lessee waives any claims against Town for injury to Lessee's business or any loss of income therefrom, for damage to Lessee's property, or for injury or death of any person in or about the Premises or the Town Property, from any cause whatsoever, except to the extent caused by Town's active negligence or willful misconduct.

14. DAMAGE, DESTRUCTION AND TERMINATION

14.1 Force Majeure. Prevention, delay or stoppage due to strikes, lockouts, labor disputes, Acts of God, inability to obtain labor, inability to obtain materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial orders,

enemy or hostile governmental actions, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Lessee (financial inability excepted), shall excuse the performance by Lessee for a period equal to the prevention, delay, or stoppage, except the obligations imposed with regard to rent to be paid by Lessee pursuant to this Lease. In the event any work performed by Lessee or Lessee's contractors results in a strike, lockout, and/or labor dispute, the strike, lockout, and/or labor dispute shall not excuse the performance by Lessee of the provisions of this Lease.

14.2 Restoration of Premises Termination. If, during the term of the Lease, the Premises are totally or partially destroyed, rendering the Premises totally or partially inaccessible or unusable, Lessor may restore the Premises to substantially the same condition as it was in immediately before destruction, whether or not the insurance proceeds are sufficient to cover the actual cost of restoration. Either party can also choose to terminate this Lease by giving reasonable notice to the other party.

15. SIGNS AND MARKETING.

15.1 Lessee shall not place, construct, maintain, or allow any signs affixed to the building or to the exterior of the Premises without prior written consent of the Town following Town Council review and approval. Lessee shall submit an application to the Community Development Department and, be obligated to pay all costs associated with any application process required to obtain approval for any signs.

15.2 Lessee shall not place, construct, maintain, or allow any other signs, including minor ones, visible to the exterior of the Premises without prior written consent of the Town Manager. Lessee shall submit an application to the Community Development Department and, be obligated to pay all costs associated with any application process required to obtain approval for any signs. Exterior or otherwise visible signage shall be subject to the Town's naming policy and donation policy.

15.3 Town shall include references to Lessee on signs and marketing programs prepared by or for Town in association with Lessee's operations on the Premises.

16. ASSIGNMENT AND SUBLETTING.

16.1 Town's Consent Required. Lessee shall not assign this Lease, nor any interest therein, and shall not sublet or encumber the Premises or any part thereof, nor any right or privilege appurtenant thereto, nor allow or permit any other person(s) to occupy or use the Premises, or any portion thereof, without the prior written consent of Town. This Lease shall be binding upon any permitted assignee or successor of Lessee. Consent by Town to one assignment, subletting, occupation or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person. No assignment, subletting, or encumbrance by Lessee shall release it from or in any way alter any of Lessee's obligations under this Lease. Lessee may have the Premises delivered to a subsidiary company of Lessee, but such arrangement shall in no way alter Lessee's

responsibilities hereunder with respect to the Premises. Any assignment, subletting, encumbrances, occupation, or use contrary to the provisions of this Lease shall be void and shall constitute breach of this Lease. Town may assign any of its rights hereunder without notice to Lessee.

16.2 No Release of Lessee. No subletting or assignment as approved by Town shall release Lessee of Lessee's obligation or alter the primary liability of Lessee to pay the rent and to perform all other obligations by Lessee hereunder. The acceptance of rent by Town from any other person shall not be deemed to be a waiver by Town of any provision hereof. In the event of default by any assignee of Lessee or any successor of Lessee in the performance of any of the terms hereof, Town may proceed directly against Lessee without the necessity of exhausting remedies against said assignee.

17. DEFAULTS; REMEDIES.

17.1 Defaults. The occurrence of any one or more of the following events shall constitute a material default, or breach of this Lease, by Lessee:

17.1.1 Abandonment of the Premises by Lessee as defined by California Civil Code section 1951.3;

17.1.2 Failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as provided in this Lease, where such failure shall continue for a period of ten (10) business days after written notice thereof from Town to Lessee. In the event Town serves Lessee with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph;

17.1.3 Failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease in any material respect where such failure shall continue for a period of thirty (30) days after written notice thereof from Town to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion;

17.1.4 Making by Lessee of any general arrangement or assignment for the benefit of creditors; Lessee's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); the appointment of a bankruptcy trustee or receiver to take possession of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Lease where possession is not restored to Lessee within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.

17.1.5 Failure to make the Funding Commitment payments as required under this Lease Agreement for a period of six (6) months or more.

17.2 Remedies. In the event of any material default or breach by Lessee, Town may at any time thereafter, following any notice required by statute, and without limiting Town in the exercise of any right or remedy which Town may have by reason of such default or breach:

17.2.1 Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises and Improvements to Town. In such event, Town shall be entitled to recover from Lessee all damages incurred by Town by reason of Lessee's default including but not limited to: the cost of recovering possession of the Premises and Improvements; expenses of reletting, including necessary renovation and alteration of the Premises and Improvements; reasonable attorneys' fees; the worth at the time of the award of the unpaid rent that had been earned at the time of termination of this Lease and the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of such award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided.

17.2.2 Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event, Town shall be entitled to enforce all of Town's rights and remedies under this Lease, including the right to recover rent and other payments as they become due hereunder.

17.2.3 Pursue any other remedy now or hereafter available to Town under the laws or judicial decisions of the State of California. Town shall have all remedies provided by law and equity.

17.3 No Relief from Forfeiture After Default. Lessee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 1174 and 1179, and any other present or future law, in the event Lessee is evicted or Town otherwise lawfully takes possession of the Premises by reason of any default or breach of this Lease by Lessee.

17.4 Disposition of Abandoned Personal Property. If the Lessee fails to remove any personal property belonging to Lessee from the Premises after forty-five (45) days of the expiration or termination of this Lease, such property shall at the option of Town be deemed to have been transferred to Town. Town shall have the right to remove and to dispose of such property without liability to Lessee or to any person claiming under Lessee, and the Town shall have no need to account for such property.

18. INTEREST ON PAST-DUE OBLIGATIONS.

Except as expressly provided herein, any amount due Town when not paid when due shall bear interest at the lesser of ten percent (10%) per year or the maximum rate then allowable by law from

the date due.

19. HOLDING OVER.

If Lessee remains in possession of the Premises or any part thereof after the expiration of the term or option term hereof, such occupancy shall be a tenancy from month to month with all the obligations of this Lease applicable to Lessee and at a monthly rental obligation at the market rate in effect at the time of expiration. Nothing contained in this Lease shall give to Lessee the right to occupy the Premises after the expiration of the term, or upon an earlier termination for breach.

20. TOWN'S ACCESS.

20.1 Access for Inspection. Town and Town's agents shall have the right to enter the Premises at reasonable times, upon not less than twenty-four (24) hours prior notice to Lessee, for the purpose of inspecting same, showing same to prospective purchasers, lenders or lessees, and making such alterations, repairs, improvements, or additions to the Premises as Town may deem necessary.

20.2 Intentionally omitted

20.3 New Locks. Lessee may not install new locks on any doors without the express written consent of the Town. Lessee shall advise Town of such action and shall provide Town with keys to said locks. Lessee shall also deliver to Town the old locks with keys. Upon termination, Lessee shall leave new locks that shall become the property of Town.

21. INSURANCE.

Lessee shall purchase and maintain in full force and effect during the entire term of this Lease insurance coverage in amounts and in a form acceptable to Town as set forth in Exhibit B attached hereto and incorporated herein by reference.

Lessee shall be responsible for all losses incurred for any reason of its personal property or contents on Premises. Lessee may want to consider securing renter's liability insurance.

Lessee shall deposit with the Town Manager, on or before the effective date of this Lease, certificates of insurance necessary to satisfy Town that the insurance provisions of this Lease have been complied with, and to keep such insurance in effect and the certificates therefore on deposit with Town during the entire term of this Lease. Should Lessee not provide evidence of such required coverage at least three (3) days prior to the expiration of any existing insurance coverage, Town may purchase such insurance, on behalf of and at the expense of Lessee to provide six months of coverage.

Town shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of the Town's Risk Manager (or comparable official), the insurance provisions in this Lease do not provide adequate protection for Town and for members of the public using the Premises, the Town Manager may require Lessee to obtain insurance sufficient

in coverage, form, and amount to provide adequate protection as determined by the Risk Manager. Town's requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of risk that exists at the time a change in insurance is required.

The Town Manager or designee shall notify Lessee in writing of changes in the insurance requirements. If Lessee does not deposit copies of acceptable insurance policies with Town incorporating such changes within sixty (60) days of receipt of such notice, or in the event Lessee fails to maintain in effect any required insurance coverage, Lessee shall be in default under this lease without further notice to Lessee. Such failure shall constitute a material breach and shall be grounds for immediate termination of this Lease at the option of Town.

The procuring of such required policy or policies of insurance shall not be construed to limit Lessee's liability hereunder nor to fulfill the indemnification provision and requirements of this Lease. Notwithstanding the policy or policies of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by or connected with this Lease or with use or occupancy of the Premises.

22. DISPUTE RESOLUTION.

22.1 Unless otherwise mutually agreed to, any controversies between Lessee and Town regarding the construction or application of this Lease, and claims arising out of this Lease or its breach shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

22.2 The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Lease.

22.3 The costs of mediation shall be borne by the Parties equally.

22.4 Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation arising out of any dispute related to this Lease, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

23. NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF THE TOWN.

No official or employee of Town shall be personally liable for any default or liability under this agreement.

24. NON-DISCRIMINATION

26.1 Non-discrimination in Lease Activities. Lessee agrees that in the performance of this Lease and in connection with all of the activities Lessee conducts on the Premises, it shall not discriminate, harass, or retaliate against any person or class of persons regardless of

race, religious creed (including religious dress and grooming practices), color, national origin (including language use restrictions), ancestry, religion, disability (mental and physical), medical condition, sex, gender (including gender identity and gender expression), physical characteristics, marital status, age, sexual orientation, genetic information (including family health history and genetic test results), organizational affiliation, and military or veteran status, or any other consideration made unlawful by local, State or Federal law. Tenant shall make its accommodations and services available to all persons on equal and reasonable terms.

25. INDEPENDENT CONTRACTOR.

It is agreed that Lessee shall act and be an independent contractor and not an agent nor employee of Town.

26. CONFLICT OF INTEREST.

Lessee shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Lease. Lessee warrants and covenants that no official or employee of Town nor any business entity in which any official or employee of Town is interested: (1) has been employed or retained to solicit or aid in the procuring of this agreement; or (2) will be employed in the performance of this Lease without the divulgence of such fact to Town. In the event that Town determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of Town, Lessee upon request of Town shall immediately terminate such employment. Violation of this provision constitutes a serious breach of this Lease and Town may terminate this Lease as a result of such violation.

27. ESTOPPEL CERTIFICATE.

Lessee shall, from time to time, upon at least thirty (30) days prior written notice from Town, execute, acknowledge and deliver to Town a statement in writing: (i) certifying this Lease is unmodified and in full force and effect, or, if modified, stating the nature of the modification and certifying that the Lease, as modified, is in full force and effect, and the date to which the rental and other charges, if any, have been paid; and, (ii) acknowledging that there are not to Lessee's knowledge, any defaults, or stating if any defaults are claimed, any statement may be relied upon by any prospective purchaser or encumbrance of the Town Property. Lessee's failure to deliver such statements within such time shall be conclusive upon the Lessee that this Lease is in full force and effect, except as and to the extent any modification has been represented by Town, and that there are no uncured defaults in Town's performance.

28. LIENS.

Lessee agrees at its sole cost and expense to keep the Premises free and clear of any and all claims, levies, liens, encumbrances or attachments.

29. VACATING.

Upon termination of the tenancy, Lessee shall completely vacate the Premises, including the removal of any and all of its property. Before departure, Lessee shall return keys and personal property listed on the inventory to Town in good, clean and sanitary condition, reasonable wear and tear excepted. Lessee shall allow Town to inspect the Premises to verify the condition of the Premises and its contents.

30. ABANDONMENT.

Lessee's absence from the Premises for three (3) consecutive days, without prior notice, during which time rent or other charges are delinquent, shall be deemed abandonment of the Premises. Such abandonment will be deemed cause for immediate termination without notice. Town shall thereupon be authorized to enter and take possession and to remove and dispose of the property of Lessee or its guests without any liability whatsoever to Town.

31. NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to Town addressed as follows:

Town of Los Gatos
Attention: Town Manager
110 E. Main Street
Los Gatos, CA 95030

And to Lessee addressed as follows:

Friends of the Los Gatos Public Library
Attn: Friends of the Library President
100 Villa Ave.
Los Gatos, CA 95030

Notices may be served upon Lessee in person, by first class mail, or by certified mail whether or not said mailing is accepted by Lessee. If notice is sent via facsimile or e-mail, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday. These addresses shall be used for service of process.

32. TIME.

Time shall be of the essence in this Lease.

33. AMENDMENTS.

It is mutually agreed that no oral Leases have been entered into and that no alteration or variation of the terms of this Lease shall be valid unless made in writing and signed by the Parties to this Lease.

34. SIGNING AUTHORITY.

If this Lease is not signed by all Lessees named herein, the person actually signing warrants that he/she has the authority to sign for the others.

35. CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Lease are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

36. SURRENDER OF LEASE NOT MERGER.

The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Town, terminate all or any existing subleases or subtenancies, or may, at the option of Town, operate as an assignment of any and all such subleases or subtenancies.

37. INTEGRATED DOCUMENT.

This Lease, including any exhibits attached hereto, embodies the entire agreement between Town and Lessee. No other understanding, agreements, conversations or otherwise, with any officer, agent or employee of Town prior to execution of this Lease shall affect or modify any of the terms or obligations contained in any documents comprising this Lease. Any such verbal agreement shall be considered as unofficial information and in no way binding upon Town. All agreements with Town are subject to approval of the Town Council before Town shall be bound thereby.

38. WAIVER.

Waiver by Town of one or more conditions of performance or any breach of a condition under this Lease shall not be construed as a waiver of any other condition of performance or subsequent breaches. The subsequent acceptance by a Party of the performance of any obligation or duty by another Party shall not be deemed to be a waiver of any term or condition of this Lease. The exercise of any remedy, right, option or privilege hereunder by Town shall not preclude Town from exercising the same or any and all other remedies, rights, options and privileges hereunder and Town's failure to exercise any remedy, right, option or privilege at law or equity, or otherwise which Town may have, shall not be construed as a waiver.

39. INTERPRETATIONS.

In construing or interpreting this Lease, the word "or" shall not be construed as exclusive and the word "including" shall not be limiting. The Parties agree that this Lease shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against any other Party.

40. SEVERABILITY CLAUSE.

If any provision of this Lease is held to be illegal, invalid or unenforceable in full or in part, for any reason, then such provision shall be modified to the minimum extent necessary to make the provision legal, valid and enforceable, and the other provisions of this Lease shall not be affected thereby.

41. GOVERNING LAW.

This Lease shall be governed and construed in accordance with the statutes and laws of the State of California.

42. VENUE.

In the event that suit shall be brought by any Party to this Lease, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara.

43. COMPLIANCE WITH LAWS.

The Parties hereto shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments in the performance of their rights, duties and obligations under this Lease.

44. BROKERS.

Each party represents that neither has had dealings with any real estate broker, finder, or other person, with respect to this lease in any manner. Each Party shall hold harmless the other party from all damages resulting from any claims that may be asserted against the other party by any broker, finder, or other person with whom the Indemnifying Party has or purportedly has dealt.

45. ATTACHMENTS TO LEASE.

The following exhibits are attached to and made a part of this Agreement:

“A” – Description of Subject Premises

“B” – Standard Insurance Requirements

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

TOWN:

TOWN OF LOS GATOS (LESSOR)

TENANT:

FRIENDS OF THE LOS GATOS
PUBLIC LIBRARY

Laurel Prevetti, Town Manager

, President

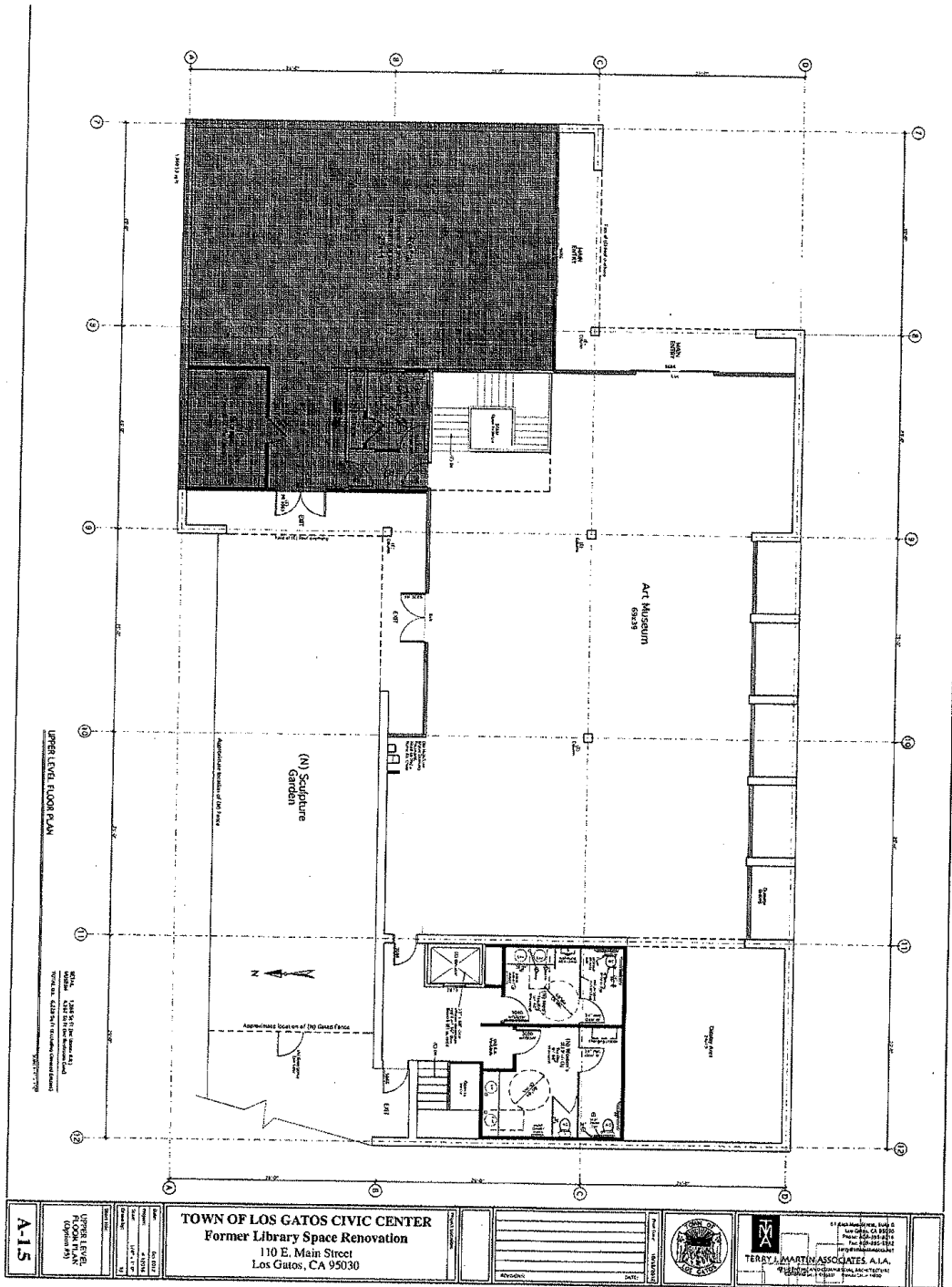
ATTEST:

Wendy Wood, Town Clerk

APPROVED AS TO FORM:

Gabrielle Whelan, Town Attorney

LEASE AGREEMENT
BETWEEN
TOWN OF LOS GATOS
AND
FRIENDS OF THE LOS GATOS PUBLIC LIBRARY
EXHIBIT A
DESCRIPTION OF SUBJECT PREMISES



A-15	TOWN OF LOS GATOS CIVIC CENTER Former Library Space Renovation 110 E. Main Street Los Gatos, CA 95030			
	DATE: _____ DRAWN BY: _____ CHECKED BY: _____	PROJECT NO.: _____ SHEET NO.: _____		

**LEASE AGREEMENT BY AND BETWEEN TOWN OF LOS GATOS, CALIFORNIA
AND
FRIENDS OF THE LIBRARY**

**EXHIBIT B
INSURANCE REQUIREMENTS**

Upon executing this Lease Agreement, Tenant shall procure and maintain for the duration of the Lease and for so long as may be necessary to fully protect Landlord, insurance against claims for injuries to persons and/or damages to property which may arise from or in connection with the Tenant's operations on, access to, and/or use of the Premises and Property. The cost of such insurance shall be borne by the Tenant.

A. CERTIFICATE REQUIREMENTS

The Town will be issued a Certificate of Insurance (a Memorandum of Understanding will not be accepted) with the following minimum requirements:

- Certificate(s) will show current policy number(s) and effective dates,
- Coverage and policy limits will meet, or exceed, requirements below,
- The Certificate Holder will be Town of Los Gatos, 110 E Main Street, Los Gatos, CA 95030,
- Certificate will be signed by an authorized representative,
- An endorsement, if required below, will be provided to show the Town, its officers, officials, employees, and volunteers as additional insureds, and
- Coverages must be maintained during the term of the Lease with the Town, unless a longer duration is required.

B. MINIMUM SCOPE AND LIMIT OF INSURANCE

Tenant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. If Tenant maintains broader insurance coverage and/or higher limits than the minimums shown below, Landlord shall be entitled to the broader insurance coverage and/or higher limits maintained by Tenant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Landlord.

Coverage shall be at least as broad as the following:

1. **Commercial General Liability (CGL):** During the term of this Lease, including any extensions or renewals thereof, Tenant, at its sole cost, shall keep in full force and effect a policy of standard form commercial general liability insurance, including coverage for contractual liability, personal injury, property damage, products liability, acts of independent contractors, with a single combined liability limit of not less than **One Million Dollars (\$1,000,000.00) per occurrence; Two Million Dollars (\$2,000,000) in the aggregate**, for bodily injury and property damage insuring against all liability of Tenant and its employees, agents, representatives, subtenants, assignees and concessionaires arising out of and in connection with Tenant's use or occupancy of the Premises.

The liability insurance policy required herein shall insure Tenant's performance of the indemnity provisions of this Lease, and **Landlord, and its officials, officers, employees, and agents shall be named as additional insureds with cross-liability endorsements.** The Landlord, and any person, firms or corporations designated by Landlord, by reason of their inclusion under said policy, shall not incur liability for payment of any premium for any policy of insurance required herein. If available, any policy of insurance required herein shall contain a provision requiring the insurer to give the Landlord **thirty (30) days' prior written notice before canceling or changing any such coverage.**

2. **Automobile Liability:** Tenant shall procure automobile insurance on an "Any Auto" Basis: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 combined single limit each occurrence/per accident for bodily injury and property damage.
3. **Workers' Compensation and Employer's Liability Insurance.** Tenant shall obtain policies as required by applicable law against liability arising on account of injuries or death to workers or employees on the Premises or any improvement of Tenant. Such workers' compensation insurance shall be in amounts at least equal to the maximum liability of Tenant, its agents, and contractors under the Workers' Compensation Insurance and Safety Act of the State of California and the Federal Longshore and Harbor Workers' Compensation Act, as applicable. Tenant shall also maintain Employer's Liability insurance with limits no less than **One Million Dollars (\$1,000,000) per accident for bodily injury or disease, \$1,000,000 disease – policy limit, \$1,000,000 disease – each employee.** Such insurance shall include a waiver of subrogation in favor of Landlord.
4. **Property Insurance**
Tenant shall, at Tenant's sole expense, obtain and keep in full force and effect an insurance policy covering all of Tenant's personal property, trade fixtures, equipment and merchandise located in or upon the leased Premises, and including tenant improvements and betterments in an amount sufficient to cover not less than **one hundred percent (100%) of the replacement value** of the personal property. Tenant shall be solely responsible for any uninsured loss or damage caused to Tenant's personal property, trade fixtures, equipment and merchandise located in or upon the leased Premises for any reason.

C. OTHER INSURANCE PROVISIONS

1. **Primary Coverage:**
For any claims related to this Lease, the Tenant's insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the Town, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Landlord, its officers, officials, employees, or volunteers shall be excess of the Tenant's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability

policies.

2. Insurance Limits, Rating, and Proof of Coverages:

All insurance policies required hereunder shall be issued by an insurance company having not less than a financial rating of Class A VIII or better as rated in the most current available Best's Key Rating Guide.

Prior to the commencement of the term of this Lease, Tenant shall provide Landlord with evidence of any insurance policies required herein and shall continue to provide such evidence of insurance upon the request of Landlord during the remaining term of this Lease, including all extensions and renewals thereto. All public liability, property damage and other casualty policies shall be written as primary policies, not contributing with and not in excess of coverage which the Landlord may carry.

3. Review of Coverage:

Landlord may increase or decrease the amount of commercial general liability insurance and other policies required herein, based upon a general review by Landlord of the standard insurance requirements. Changes in insurance amounts shall occur not more frequently than once a year. Landlord will notify Tenant of any changes under this provision of this Lease. Landlord may also require Tenant's contractor or subcontractor to obtain insurance sufficient in coverage, form and amount to provide adequate protection for Landlord, Tenant, and/or those using the Premises or Property.

4. Contractors:

Tenant shall require and verify that all contractors and subcontractors maintain insurance meeting all the requirements stated herein, and Tenant shall ensure that Town, its officers, officials, employees, agents, and volunteers are named as additional insureds on insurance required from its contractor(s) and subcontractor(s).

D. SPECIAL RISKS/CIRCUMSTANCES

Landlord reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances and provide notice to Tenant.

