

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of \_\_\_\_\_, 2026 ("Effective Date",) by and between the City of Oceanside, a California municipal corporation, ("Buyer" or "City") and Larry W. Hatter and Cathleen E. Hatter, Co-Trustees of the Hatter Family Trust dated December 4, 1986 ("Seller"). The Effective Date shall be the date this Agreement is approved by the Oceanside City Council and signed by Seller.

WHEREAS, Seller is owner of that certain real property described as approximately .66 acres of land containing a building consisting of approximately 10,000 square feet located at 615 Mission Avenue, as more particularly described and incorporated herein by reference, and Seller desires to sell the property;

WHEREAS, Buyer desires to purchase the Property for library purposes and will initially include offices for the City's READS Learning Center utilized for literacy programs and other educational programs, in addition to leasing a portion of the property to the Oceanside Friends of the Library for a book sorting and storage location and a retail bookstore, and together these services are a benefit to the public and citizens of the City of Oceanside;

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained and for other valuable consideration, the parties hereto agree as follows:

ARTICLE I

RECITALS

101. Description of Property. Seller is the owner of a fee interest in that certain real property situated in the City of Oceanside, County of San Diego, State of California, which land and building are associated with Assessor's Parcel Number 147-281-01, and is more particularly described in Exhibit "A" and as illustrated and delineated on a sketch thereof marked Exhibit "B", respectively incorporated herein and made a part hereof. For the purposes of this Agreement said real property and the improvements thereon are collectively referred to as the ("Property").

102. Status and Powers of Buyer. Buyer is a California municipal corporation organized and existing pursuant to the Constitution and statutes of the State of California and is authorized to enter into this Agreement to purchase the Property from Seller and perform the actions and duties of the Buyer more particularly described in this Agreement.

103. Status and Powers of Seller. Sellers are Co-Trustees of a California trust and are authorized by the laws of the State of California to sell the Property

to Buyer and perform the actions and duties of the Seller more particularly described in this Agreement.

104. Purpose of Agreement. Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer on the terms and conditions in this Agreement.

105. Public Benefit. This Agreement is for the benefit of the public and is in the furtherance of the public purposes of Buyer.

## ARTICLE II

### DEFINITIONS AND GENERAL PROVISIONS

201. Agreement. For good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as set forth herein.

202. Definitions in General. The terms defined in Exhibit "C" attached hereto and by this reference incorporated herein, as used and capitalized herein, shall, for all purposes of this Agreement, have the meanings ascribed to them in said Exhibit "C", unless the context clearly requires some other meaning. In addition, the term "Agreement" as used herein means this Purchase and Sale Agreement.

203. Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement.

## ARTICLE III

### PURCHASE AND SALE OF PROPERTY

301. Sale of Property. Seller agrees to sell and Buyer agrees to purchase the Property on the terms and conditions in this Agreement.

302. Purchase Price. The purchase price of the Property is **Three Million Eighty Thousand and No/100 Dollars (\$3,080,000)** the ("Purchase Price").

## ARTICLE IV

### CONDITIONS PRECEDENT

401. Conditions Precedent to Closing. Buyer's obligation to purchase the Property from Seller is subject to the following conditions precedent set forth in

Sections 402 through 414 inclusive ("Conditions Precedent"). Subject to Buyer's rights under Article VII "ESCROW", if any of the Conditions Precedent have not been fulfilled within the applicable time periods or if Buyer disapproves, pursuant to this Article IV, a matter for which Buyer's approval is required, Buyer may:

- (a) Waive the condition or disapproval and close escrow with respect to the Property in accordance with this Agreement, without adjustment or rebate in the Purchase Price;
- (b) Cure the failure of the condition or representation and reduce the Purchase Price by the amount equal to the cost to cure; or
- (c) Terminate this Agreement by written notice to Seller.

402. Title. Unless otherwise specified in this Agreement, Seller shall convey title to the Property to Buyer by grant deed, free and clear of all liens and encumbrances, subject to the following: Seller will provide Buyer with access to all documents in its possession regarding the Property but makes no representations or warranties as to the accuracy or reliability thereof. Seller makes no representations or warranties, expressed or otherwise, regarding the condition of title to the Property or the condition of the Property. Buyer is obligated to investigate, inspect and analyze the condition of the Property and the condition of title to the Property to its own satisfaction and expressly agrees that in entering into the Agreement, it is relying on its own investigation as to the condition of the Property and condition of title to the Property, except as expressly provided herein.

403. Preliminary Title Report. Upon ordering the Escrow, Buyer shall request a preliminary title report for the Property ("Preliminary Report") issued by Stewart Title Insurance Company or another title insurance company mutually approved by Seller and Buyer ("Title Company") containing such exceptions as the Title Company would specify in a California Land Title Association ("CLTA") standard policy of title insurance (or, provided Buyer so requests in writing, as the Title Company would specify in an American Land Title Association ("ALTA") extended owner's policy of title insurance), together with copies of all exceptions and plotted easements and the documents supporting the exceptions (hereinafter collectively called "supporting documents").

Within **fifteen (15) days after the Effective Date of this Agreement**, and receipt of legible copies of the Preliminary Report and supporting documents, Buyer shall give written notice to Seller of its disapproval of the Preliminary Report, any part thereof, or of any exceptions, or of the condition of title reflected in the Preliminary Report or the supporting documents. If Buyer gives written notice of disapproval as provided in this paragraph, Seller shall remove or otherwise cure, in a manner reasonably satisfactory to Buyer, the disapproved item or items at or before the close of escrow. The right of Buyer to disapprove the condition of title shall apply only to exceptions which materially adversely limit or affect the use of the Property. Seller

may elect not to remove or cure any disapproved item or items by delivering written notice thereof to Buyer within **ten (10) days** following the date of written notification of and the disapproval. If Seller elects not to remove or cure any disapproved item or items, Buyer may terminate this Agreement by delivering a written notice of termination to Seller within **ten (10) days** after the date that Buyer actually receives notice of Seller's election not to remove or cure any disapproved item.

This Agreement provides that Buyer will receive title free and clear of liens and encumbrances, subject to the provisions of Section 402. Seller shall be obligated to pay any property taxes and assessments to the date of the close of Escrow. The parties recognize that certain encumbrances such as existing deeds of trust, tax liens, assessment liens, and the like will be discharged through Escrow as provided in this Agreement. Notwithstanding the giving of any notice or any failure to give any notice with respect to these items, they shall be discharged through Escrow as provided in this Agreement.

From and after the effective date of the Preliminary Report, Seller shall not alter the condition of title without the express written consent of Buyer.

404. Title Policies. On or before the close of Escrow, Buyer shall have received evidence that Title Company is ready, willing, and able to issue, upon payment of the Title Company's regularly scheduled premium a California Land Title Association (CLTA) standard policy of title insurance, or, if requested by Buyer, an American Land Title Association (ALTA) extended owner's policy of title insurance in the face amount of the Purchase Price, showing title to the Property vested in the Buyer subject only to:

- (a) Non-delinquent general, special, and supplemental property taxes or assessments constituting a lien at close of Escrow; and
- (b) The matters described in the printed form portion of the Policy of Title Insurance to the extent that such matters do not conflict with the provisions of this Agreement; and
- (c) Covenants, conditions, reservations, restrictions, easements or other matters appearing as exceptions in the Preliminary Report as approved by Buyer pursuant to this Agreement; and
- (d) Any lien voluntarily imposed by Buyer as of the close of Escrow.

405. Physical Condition of the Property. Within **seventy-five (75) calendar days** after the Effective Date of this Agreement, Buyer shall, pursuant to Section 802 herein, review and approve or disapprove of the physical condition of the Property. Seller shall not cause the physical condition of the Property to deteriorate or change after the date of the inspection, normal wear and tear excepted, without the prior written consent of Buyer. Buyer agrees that the Property is being sold in its "As-Is" and "Where-Is" condition, except as expressly provided for elsewhere herein.

406. Property Documents. Within **ten (10) calendar days** after the date of this Agreement, Seller shall deliver to Buyer current copies of all permits, soils tests, hazardous or toxic waste reports, geological studies, environmental impact studies, topographical maps, licenses, maintenance contracts, utility contracts, operating contracts, leases, maintenance contracts, service contracts, and other documents pertaining to the Property ("Property Documents"). **Prior to the close of Feasibility Period pursuant to Section 802 herein, Buyer shall review and approve or disapprove each Property Document.** On or before the close of Escrow, Seller shall assign to Buyer all of Seller's rights and remedies under the Property Documents, to the extent assignable, pursuant to an assignment of contracts, warranties, guarantees, and other intangible property in form and substance satisfactory to Buyer. At the request of Buyer, the assignment of contracts shall exclude Seller's rights under any Property Documents designated by Buyer. At the request of Buyer, Seller shall use its best good faith efforts to obtain the consent to assignment of any other parties to the Property Documents as specified by Buyer. At the request of Buyer, Seller shall terminate any Property Document designated by Buyer as authorized by the Property Document, by delivering notices to the other party under the Property Document in sufficient time to terminate the Property Document prior to the close of Escrow.

407. Non-foreign Affidavit. If applicable, on or before the close of Escrow, Seller shall deliver to Buyer a non-foreign affidavit as required by the Foreign Investment In Real Property Tax Act (FIRPTA) [42 USC § 1445] executed by Seller.

408. Seller's Obligations. The performance by Seller of every material covenant, agreement, and promise to be performed by Seller pursuant to this Agreement and the related documents executed or to be executed by Seller.

409. Seller's Representations. The truth and accuracy of all Seller's representations and warranties as set forth in this Agreement or in documents provided by Seller under this Agreement, subject to the provisions of Section 402.

410. Entitlements. Not applicable.

411. Appraisal. The Purchase Price of the Property is subject to an appraisal ("Appraisal"), which shall be prepared for Buyer by a licensed appraiser to determine the market valuation of the Property ("Appraised Value"), provided however, if the Appraised Value is higher than the Purchase Price, then there shall be no change to the Purchase Price. If the Appraised Value is lower than the Purchase Price set forth in Section 302 of this Agreement, then the Purchase Price may be subject to renegotiation. Both parties shall have thirty (30) days from the date Seller is notified in writing by Buyer of the Appraised Value, in which to terminate the Agreement due to disapproval of the Appraised Value. If Buyer does not respond in writing with their intention to terminate the Agreement due to their disapproval of the Appraised Value, then the Appraised Value shall be deemed acceptable.

412. Memorandum of Understanding with the Foundation. As a condition to the close of Escrow, the Buyer shall enter into a Memorandum of Understanding ("MOU") with the Oceanside Public Library Foundation ("Foundation"), pursuant to which the Foundation agrees to contribute \$500,000 to the City for improvements to the Property and the City agrees to use the Property for library purposes for a period of 55 years from Close of Escrow. The MOU shall also allow the Foundation to have the naming rights for the Building/Property and the right to design the building signage for the Property, with City having the right to review and approve each. There shall be no financial gain or exchange of funds payable to the Foundation allowed for such rights from any donor or third party seeking the ability to control these rights. The MOU shall be substantially in the form attached hereto as Exhibit "D"

413. Lease with Friends of the Oceanside Library: The Buyer shall enter into a long term property use agreement ("Use Agreement") with the Friends of the Oceanside Public Library ("Friends"), for a term consisting of approximately 10 years with initial monthly rent of \$3,000 effective upon the initial move in date for approximately 7,000 square feet ("Approximate Leased Premises"), to be confirmed and documented prior to commencement of the Use Agreement, with an increase to the monthly rent effective on the sixty-first (61st) month of the initial term. The amount of the increase shall be based on the then current consumer price index for the San Diego All Urban Consumers ("CPI"). The commencement of the agreement will occur after the completion by the City of initial improvements required for occupancy. The Use Agreement will provide for three (3) consecutive ten (10)-year extension options upon the same terms and conditions, including CPI rent increases at the commencement and mid-point of each extended term. The Friends, but not the City, shall have the right to terminate all or a portion of the Use Agreement for any reason, with ninety (90) days' advance written notice to City.

The Friends will be required to provide the Buyer with: (a) evidence of general liability insurance complying with the City's standard coverage requirements, (b) proof of workers' compensation insurance for any employees that will be occupying the leased space, (c) endorsement naming the Buyer as "additional insured" and (d) certain other endorsements as may be required by the Buyer as set forth in the Use Agreement.

The ongoing maintenance expenses, utilities (excluding internet and telephone), and cleaning expenses related to the leased premises shall be the responsibility of the City during the term of the Use Agreement. It is the intention that the Friends will occupy a portion of the first floor of the Property for use as a bookstore, and the entire basement floor for use as a book sorting and storage area, or for other library uses, if first approved in writing by the Buyer throughout the term of the Use Agreement.

The Friends shall be responsible for all tenant improvements necessary for its Approximate Leased Premises, except the City shall install a demising wall on the

first floor of the Property to separate the bookstore space from the remainder of the first floor, as well as a private entry door for access to the space, and interior painting, and carpet or vinyl flooring for the first floor leased premises only. The City shall also install an elevator within the building, which is required for use of the basement area, with the exact location to be determined by the City. The elevator will be purchased and installed at the City's cost; however, such costs may be offset by the Foundation contribution of \$500,000, as further described within Section 412.

The Friends have committed Bringe Trust literacy funds to support renovations for the READS Learning Center, and plan to launch a large-scale fundraising campaign, in coordination with the Foundation, to further offset renovation costs for the Property. The Use Agreement shall be substantially in the form attached hereto as Exhibit "E".

414. READS Learning Center The Buyer intends to relocate the City's READS Learning Center to the Property to occupy a portion of the first floor, once all required ADA and Property improvements have been completed after the Property transfers to the Buyer.

## ARTICLE V

### SELLER'S REPRESENTATIONS AND WARRANTIES

501. Time. The representations and warranties by Seller in this Article are made as of the date of this Agreement and as of the close of Escrow and will survive the close of Escrow and the recording of the Grant Deed.

502. Title. As of the date of this Agreement, Seller is or will be the legal and equitable owner of the Property, with full right to convey, subject to the provisions of Section 402. Unless this Agreement is terminated pursuant to the second paragraph of Section 403, as of the close of Escrow, Seller is the legal and equitable owner of a fee interest in the Property, with full right to convey said interest. Seller has not previously conveyed title to the Property to any other person. Seller has not granted any options or rights of first refusal or rights of first offer to third parties to purchase or otherwise acquire an interest in the Property. The Property is free and clear of all liens, encumbrances, claims, demands, easements, leases, agreements, covenants, conditions, or restrictions of any kind, except for the exceptions set forth in the Preliminary Report. Seller has obtained (or will obtain as of close of Escrow) all required consents, permissions or releases to convey good and marketable title to Buyer.

503. Hazardous Substances. To the best of Seller's knowledge, the Property is free and has always been free from Hazardous Substances and is not and has never been in violation of any Environmental Laws. Seller has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property is or has been in violation of

any Environmental Law, or informing Seller that the Property is subject to investigation or inquiry regarding Hazardous Substances on the Property or the potential violation of any Environmental Law.

504. Violation of Law. To the best of Seller's knowledge, no condition on the Property violates any health, safety, fire, environments, building, zoning or other federal, state, or local law, code, ordinance, or regulation.

505. Litigation. There is no pending or threatened litigation, administrative proceeding, or other legal or governmental action or condemnation with respect to the Property or which may adversely affect Seller's ability to fulfill the obligations of this Agreement.

506. Bankruptcy. No filing or petition under the United States Bankruptcy Law or any insolvency laws, or any laws for composition of indebtedness or for the reorganization of debtors has been filed with regard to Seller.

507. No Defaults. Seller is not in default of Seller's obligations or liabilities pertaining to the Property. There are no facts, circumstances, conditions or events, which after notice or lapse of time would constitute default. Seller has not received any notice of any default and has no reason to believe that there is likely to be any breach or default of any of Seller's obligations or liabilities pertaining to the Property.

508. Special Studies Zone. The Property is not within a special studies zone under the Alquist-Priolo Geologic Hazard Act [Pub. Res. Code §§ 2621.9 et seq.] (which generally requires sellers to inform purchasers if property is within a special studies zone, which zones are generally near potentially or recently active earthquake faults).

509. Foreign Investment Real Property Tax Act. Seller is not a "foreign person" within the meaning of 42 USC § 1445(f)(3). Seller understands and agrees that the certification made in this section may be disclosed to the Internal Revenue Service by Seller and that any false statement contained herein could be punished by fine, imprisonment or both. This certification is made under penalty of perjury under the laws of the State of California.

510. Disclosure. Any information that Seller has delivered to Buyer either directly or through Seller's agents or employees, is complete and accurate. Seller has disclosed to Buyer all material facts with respect to the Property to which Seller has access.

## ARTICLE VI

### COVENANTS

601. Power to Enter into Agreements.

(a) Buyer is duly authorized to enter into this Agreement. The provisions of this Agreement are and will be the valid and legally enforceable obligations of Buyer in accordance with their terms and the terms of this Agreement.

(b) Seller is duly authorized to enter into this Agreement and to enter into the transactions contemplated by this Agreement. Seller has duly authorized and executed this Agreement.

**602. No Violation of Other Agreements.**

(a) Buyer hereby represents that neither the execution and delivery of this Agreement, nor the fulfillment of and compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of terms or violation of any other agreement to which Buyer is a party or by which Buyer is bound, or constitutes a default under any of the foregoing.

(b) Seller hereby represents that neither the execution and delivery of this Agreement, nor the fulfillment of and compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of terms or violation of any other agreement to which Seller is a party or by which Seller is bound, or constitutes a default under any of the foregoing.

**603. Payment of Seller's Obligations.** To the extent Seller is authorized by the Property Documents, Seller shall discharge all obligations and liabilities under the Property Documents before the close of escrow with respect to the Property.

**604. Brokers.** Seller and Buyer acknowledge that there are no brokers involved in this transaction, and there will be no real estate agent fees and/or broker's commission paid in conjunction therewith through this Agreement. Seller shall hold Buyer harmless from any claims for such fees or commissions claimed by a broker, real estate agent or other third party claiming through Seller.

**605. Litigation.** Seller shall immediately notify Buyer of any lawsuits, condemnation proceedings, rezoning, or other governmental order or action, or any threat thereof, of which Seller has actual knowledge, which might affect the Property or any interest of Buyer with respect to the Property.

**606. Indemnification.** Seller shall indemnify, defend and hold Buyer harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of Seller's covenants under this Agreement and any other related documents, or from Seller's false representations under this Agreement or in any other related documents, except for any liability, loss, or claims for damages resulting from the sole negligence or willful misconduct of Buyer or Buyer's officers or employees.

Buyer shall indemnify, defend and hold Seller harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of Buyer's covenants under this Agreement and any other related documents, or from Buyer's false representations under this Agreement or in any other related documents, except for any liability, loss, or claims for damages resulting from the sole negligence or willful misconduct of Seller or Seller's officers or employees. Notwithstanding the foregoing, Buyer's indemnification of Seller shall be limited to the Liquidated Damages pursuant to Section 902 herein.

The provisions of this Section 606 shall survive the Close of Escrow with respect to the Property.

## ARTICLE VII

### ESCROW

701. Establishment of Escrow. Within **seven (7) days after the date this Agreement is approved** by the Oceanside City Council, Buyer and Seller shall establish an Escrow for the close of the sale of the Property with the escrow department of the Title Company ("Escrow Agent"). If the Escrow Agent is unwilling or unable to perform, Seller shall designate another escrow agent. Escrow Agent shall notify both parties in writing of the specific date on which the Escrow has opened. This Agreement shall constitute Escrow Instructions, provided however, that Escrow Agent shall prepare general instructions as may be deemed necessary by the Escrow Agent for the fulfillment of this Agreement and deliver those general instructions to Seller and Buyer. Buyer and Seller shall each execute the general instructions, or propose changes thereto, within **five (5) days** after receipt of the instructions. If there is any conflict between the terms of the general instructions and this Agreement, the provisions of this Agreement shall prevail unless the conflicting provision is specifically identified as an amendment to this Agreement.

702. Opening Deposits. None.

703. Closing. Subject to the provisions of Sections 402 and 802 herein and no later than **June 15, 2026** ("Closing Deadline"), the grant deed shall be recorded and the Property transferred from Seller to Buyer ("close of Escrow") after Buyer has either approved or waived each Condition Precedent.

704. Closing Deposits. On or before the close of Escrow, Seller and Buyer shall deposit with Escrow Agency the following documents and shall close Escrow as follows:

(a) Seller shall deposit with Escrow Agent the following:

(i) The original executed and acknowledged Grant Deed conveying the Property from Seller to Buyer;

(ii) The original Non-Foreign Affidavit executed by Seller;

(iii) The originals of all Property Documents, except for those documents, which by law, Seller must keep in its custody;

(iv) A certificate acknowledging that all conditions to the close of Escrow that Buyer was to satisfy or perform have been satisfied and performed, and that Seller's representations, covenants, and warranties made in or pursuant to this Agreement are correct as of the close of Escrow;

(v) Any other documents or funds required of Seller to close Escrow in accordance with this Agreement;

(b) Buyer shall deposit with Escrow Agent the following:

(i) The Purchase Price of \$3,080,000, which shall be payable through a deferred sales trust or a structured installment sale pursuant to Internal Revenue Code section 453, with the Parties agreeing that Buyer's periodic payment obligations thereunder may be transferred and assigned to a third-party financial institution selected by Seller in exchange for payment by Buyer to such financial institution of a premium in the amount of \$3,080,000, with such premium used to purchase an annuity that will provide periodic disbursements to Seller.

(ii) Additional cash in the amount necessary to pay Buyer's share of closing costs as set forth in this Agreement or the escrow instructions and that portion of the Title Policy in excess of the premium for a CLTA Standard Policy of Title Insurance;

(iii) A certificate executed by Buyer providing that all conditions to close of Escrow that Seller was to satisfy or perform have been satisfied and performed and Buyer's representations, covenants, and warranties made in and pursuant to this Agreement are correct as of the close of Escrow;

(iv) Any other document or funds required of Buyer to close Escrow in accordance with this Agreement.

705. Closing Costs. Seller shall pay the premium for a CLTA Standard Policy of Title Insurance premium, all of the real property transfer taxes and documentary transfer taxes (if any) payable upon recordation of the Grant Deed for the Property, and any sales, use or ad valorem taxes connected with the Close of Escrow for the Property. If Buyer request an ALTA extended owner's policy Buyer shall pay the that

portion of the premium for the title policy in excess of the premium for a CLTA Standard Policy. Buyer and Seller shall each pay one-half of the Escrow Agent's fee.

706. Property Taxes and Prorations. Seller shall be solely responsible for bringing the Property's real property taxes current as of the Close of Escrow and Buyer shall have no liability for payment of taxes. It is recognized that Buyer is a tax-exempt governmental agency. Current rent shall be prorated as of the Close of Escrow when and as collected.

707. Possession. Right to possession of the Property, or the applicable parcel, shall transfer at Close of Escrow free of all tenancies.

## ARTICLE VIII

### MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

801. Intentionally Omitted.

802. Inspection and Feasibility Period. Seller hereby consents to entry upon the Property by Buyer or its officers, employees, contractors and agents for the purpose of conducting physical inspections and tests from the Effective Date of this Agreement to the close of Escrow. Buyer shall have **seventy-five (75) calendar days** from the Effective Date of this Agreement ("Feasibility Period") in which to complete its inspections, testing and feasibility studies of the Property, including but not limited to, inspection and examination of soils, environmental factor, Hazardous Substances, if any, and archeological information relating to the Property; and a review and investigation of the effect of any easements, zoning, map, permits, reports, engineering data, regulations, ordinances, and laws effecting the Property. Within ten (10) working days following the full execution of this Agreement, Seller shall deliver to Buyer copies of all architectural plans, surveys, specifications, and other documents pertaining to the Property that are owned by or in the possession of Seller. If Buyer disapproves of the results of the inspection and review, Buyer may elect, prior to the last day of the Feasibility Period, to terminate this Agreement by giving Seller written notification prior to the last day of the Feasibility Period and the Opening Deposits, if any, together with all interest, if any, shall be returned to Buyer, less Escrow cancellation charges. If Buyer fails to properly notify Seller of the intent to terminate this Agreement, Buyer shall be deemed to be satisfied with the results of the inspection and shall be deemed to have waived the right to terminate this Agreement pursuant to this provision.

Buyer agrees to defend, indemnify and hold Seller harmless from all liabilities, costs and expenses resulting directly from Buyer's or its officers', employees', contractors' or agents' inspections and tests. Buyer agrees that its independent inspection of the Property is its sole basis to determine the suitability of the Property for its purposes and Buyer acknowledges that it is not relying on any representations by Seller regarding suitability of the Property and by executing this Agreement, Buyer acknowledges that it has made or will make its own independent

inspection of the Property. If Buyer alters the physical conditions of the Property and Escrow does not close, Buyer shall restore the Property to the condition existing before Buyer's inspections or tests.

803. Further Assurances. Whenever requested by the other party, each party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, releases, instruments of further assurance, approvals, consents and any other instrument or document as may be necessary, expedient or proper to complete the transaction contemplated by this Agreement, and to do any other acts and to execute, acknowledge, and deliver any requested document to carry out the intent and purpose of this Agreement.

804. Assignment. Seller shall have no right, power, or authority to assign or mortgage this Agreement or any portion of this Agreement, or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily, or by operation of law, without the prior written consent of Buyer. Buyer shall have no right, power, or authority to assign this Agreement or any portion of this Agreement or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily or by operation of law without Seller's prior written approval. Neither party shall unreasonably withhold approval to any assignment.

805. Preservation and Inspection of Documents. Documents received by Seller or Buyer under the provisions of this Agreement shall be retained in their respective possessions and shall be subject at all reasonable times to the inspection of the other party hereto and its assigns, agents and representatives, any of whom may make copies thereof.

806. Parties of Interest. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or party other than Seller and Buyer any rights, remedies or claims under or by reason of this Agreement or any covenants, condition or stipulation hereof; and all covenants, stipulations, promises and agreements in this Agreement made by or on behalf of Seller or Buyer shall be for the sole and exclusive benefit of Seller and Buyer.

807. No Recourse under Agreement. All covenants, stipulations, promises, agreements and obligations of the parties hereto contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the parties hereto, respectively, and not of any member, officer, employee or agent of the parties hereto in an individual capacity, and no recourse shall be had for any claim based on or under this Agreement against any member, officer, employee or agent of the parties hereto.

808. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in registered form with postage fully prepaid:

If to Buyer:

CITY OF OCEANSIDE  
Property Management Division  
ATTN: Vicki Gutierrez, Real Estate Manager  
300 North Coast Highway  
Oceanside, CA 92054  
E: [vgutierrez@oceansideca.org](mailto:vgutierrez@oceansideca.org)  
Phone: (760) 435-5014

Copy to:

City Attorney  
CITY OF OCEANSIDE  
ATTN: Steve Burke  
300 North Coast Highway  
Oceanside, CA 92054  
E: [sburke@oceansideca.org](mailto:sburke@oceansideca.org)

If to Seller:

Larry W. Hatter  
Cathleen E. Hatter  
Trustees of the  
Hatter Family Trust dated December 4, 1986  
2344 Littler Lane  
Oceanside, CA 92056  
Email: [larry@hatterassociates.com](mailto:larry@hatterassociates.com)  
Phone: (760) 500-8388

The parties hereto, by notice given hereunder, may, respectively designate different addresses to which subsequent notices, certificates or other communications will be sent.

809. Binding Effect. Without waiver of Section 804, this Agreement shall inure to the benefit of and shall be binding upon Seller, Buyer, and their respective successors and assigns.

810. Severability. If any one or more of the covenants, stipulations, promises, agreements or obligations provided in this Agreement on the part of Seller or Buyer to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant, stipulation, promise, agreement or obligation shall be deemed and construed to be severable from the remaining covenants, stipulations, promises, agreements and obligations herein contained and shall in no way affect the validity of the other provisions of this Agreement.

811. Headings. Any headings preceding the text of the several Articles and Sections hereof, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience or reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

812. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

813. Seller and Buyer Representatives. Whenever under the provisions of this Agreement the approval of Seller or Buyer is required, or Seller or Buyer are required to take some action at the request of the other, such approval of such request may be given for Seller by an Authorized Officer/Representative of Seller and for Buyer by an Authorized Officer of Buyer, and any party hereto shall be authorized to rely upon any such approval or request.

814. Form of Certificate of Officers. Every certificate with respect to compliance with a condition or covenant provided for in this Agreement and which is precedent to the taking of any action under this Agreement shall include:

(a) A statement that the person making or giving such certificate has read such covenant or condition and the definitions herein relating thereto;

(b) A brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate are based;

(c) A statement that, in the opinion of the signer, he has made or caused to be made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) A statement as to whether, in the opinion of the signer, such condition or covenant has been complied with.

A certificate may be based, insofar as its relates to legal matters, upon a certificate or opinion of or representations by counsel, unless the persons provided the certificate know that the certificate or representations with respect to the matters upon which the certificate may be based are erroneous, or in the exercise of reasonable care should have known that the same were erroneous.

815. Amendment. This Agreement may be amended, modified, or changed only in writing as mutually agreed to and duly executed by the parties hereto.

816. Counterpart. This Agreement may be executed in counterpart.

817. Time of the Essence. Time is of the essence in this Agreement and every provision contained in this Agreement.

818. Integration. This Agreement, and all attachments and exhibits hereto constitute the entire agreement of the parties. There are no oral or parol agreements, which are not expressly set forth in the Agreement or the related documents being executed in connection with this Agreement.

819. Waivers. No waiver or breach of any provision shall be deemed a waiver of any other provision, and no waiver shall be valid unless it is in writing and executed by the waiving party. No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act.

820. Attorney Fees, Litigation Costs and Related Matters. If any legal action or other proceeding, including arbitration or an action for declaratory relief, is brought to enforce this Agreement or because of a dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs in addition to any other relief. Venue for enforcement of this Agreement shall be in the Superior Court of San Diego County, North County Branch. The parties agree that before either party commences any legal or equitable action, action for declaratory relief, suit, proceeding, or arbitration that the parties shall first submit the dispute to mediation through a mutually acceptable professional mediator in San Diego County, or if a mediator cannot be agreed upon by a mediator appointed by the Judicial Arbitration and Mediation Service in San Diego County. The cost of mediation shall be shared equally by the parties.

821. Exhibits. All exhibits referred to in this agreement and attached hereto are made a part hereof and are incorporated herein by this reference.

822. Survival. Seller's representations and warranties, Buyer's representations and warranties, all covenants and obligations to be performed at a time or times after close of Escrow, and indemnities shall survive the close of Escrow and delivery and recordation of the Grant Deed.

823. Merger. All of the terms, provisions, representations, warranties, and covenants of the parties under this Agreement shall survive the close of Escrow and shall not be merged in the Deed or other documents.

## ARTICLE IX

### SPECIAL PROVISIONS

901. Entitlements. Not Applicable.

902. Liquidated Damages. **IF BUYER FAILS TO COMPLETE THE PURCHASE PROVIDED FOR IN THIS AGREEMENT BY REASON OF ANY DEFAULT OF BUYER, SELLER SHALL BE RELEASED FROM SELLER'S OBLIGATION TO SELL THE PROPERTY TO BUYER AND MAY PROCEED AGAINST BUYER UPON ANY CLAIM OR REMEDY THAT SELLER MAY HAVE IN LAW OR EQUITY; PROVIDED, HOWEVER, THAT, BY INITIALING THIS SECTION 902 BUYER AND SELLER AGREE THAT IN THE EVENT OF DEFAULT BY BUYER, (A) IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES; (B) AN AMOUNT EQUAL TO THE OPENING DEPOSITS MADE BY BUYER AND EXTENSION PERIOD PAYMENTS, IF ANY ARE MADE, SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO SELLER; (C) THE**



# ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of San Diego )

On February 20, 2026 before me, Stephanie Rojas, Notary Public  
(insert name and title of the officer)

personally appeared Larry W. Hatter and Cathleen E. Hatter,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_



(Seal)

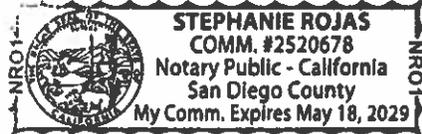


EXHIBIT "A"  
LEGAL DESCRIPTION  
TO BE PROVIDED BY SELLER PRIOR TO CLOSING

EXHIBIT "B"

DEPICTION OF PROPERTY

APN #: 147-281-01-00

**Note: "Subject Property" within the depiction is the Property.**

## EXHIBIT "C"

### DEFINITIONS

Seller. The term "Seller" means the Hatter Family Trust dated December 4, 1986.

Buyer. The term "Buyer" means the City of Oceanside, a California municipal corporation organized and existing under California law with its principal place of business in Oceanside, California in San Diego County.

Authorized Officer. The term "Authorized Officer", when used with respect to Buyer, means the Mayor, City Manager or any employee designated by the City Manager of Seller as an Authorized Officer. The term "Authorized Officer", when used with respect to Seller, means Larry W. Hatter, Cathleen E. Hatter, or any other representative designated by Seller or an Authorized Officer.

Environmental Laws. The term Environmental Laws means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to occupational health or industrial hygiene, to the extent that such relate to matters on, under, or about the Property, occupational or environmental conditions on, under, or about the Property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USC § 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USC § 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution control Act (FWPCA) [33 USC § 1251 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 USC § 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC § 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 USC § 6901 et seq.]; the Clean Air Act [42 USC § 7401 et seq.]; the Safe Drinking Water Act [42 USC § 300f et seq.]; the Surface Mining Control and Reclamation Act [30 USC § 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 USC § 11001 et seq.]; the Occupational Safety and Health Act [29 USC § 655 and 657]; the California Underground Storage of Hazardous Substances Act [Health and Safety Code § 25280 et seq.]; the California Hazardous Substances Account Act [Health and Safety Code § 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [Health and Safety Code § 24249.5 et seq.]; the Porter-Cologne Water Qualify Act [Water Code § 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to the protection of the environment as such apply to matters on, under, or about the Property.

Hazardous Substances. The term "Hazardous Substances" includes without limitation:

(a) Those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste." or "pollutant or contaminant" in any Environmental Law;

(b) Those substances listed in the United States Department of Transportation Table [49 CFR 172.101], or by the Environmental Protection Agency, or any successor agency, as hazardous substances [40 CFR Part 302];

(c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and

(d) Any material, waste, or substance that is a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 USC § 1321 or listed pursuant to 33 USC § 1317, a hazardous substance or toxic material designated pursuant to any State Statute, a flammable explosive or a radioactive material.

Property. The term "Property" means that certain real property within the City of Oceanside, California (sometimes referred to herein as the "Land"), together with the improvements located thereon (sometimes referred to herein as the "Improvements") all as more fully described in Exhibit "A" attached hereto.

State. The term "State" means the State of California.

EXHIBIT "D"

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF OCEANSIDE  
AND  
THE OCEANSIDE PUBLIC LIBRARY FOUNDATION  
  
**FORM OF MOU ATTACHED HERETO**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF OCEANSIDE AND THE OCEANSIDE PUBLIC LIBRARY  
FOUNDATION**

This Memorandum of Understanding (“MOU”) dated March \_\_, 2026 for identification purposes is made by and between the City of Oceanside, a California municipal corporation (“City”) and the Oceanside Public Library Foundation, a California non-profit corporation (“Foundation”).

**Recitals**

WHEREAS, the City is a California charter city and operates the Oceanside Public Library under the provisions of Title 1, Division 1, Part 11, Chapter 5 of the California Education Code (sections 18900 *et seq.*);

WHEREAS, the Foundation is a 501(c)(3) nonprofit established in 2003 to receive and administer gifts, donations, and fundraising that go directly to the Oceanside Public Library and to ensure its continuing excellence by enhancing facilities, services, and collections for present and future generations of Oceanside residents;

WHEREAS, the City, as buyer, has entered a Purchase and Sale Agreement with Larry W. Hatter and Cathleen E. Hatter, Co-Trustees of the Hatter Family Trust, dated December 14, 1986 (“Seller”) to purchase certain real property located at 615 Mission Avenue, Assessor’s Parcel Number 147-281-01 (“Property”);

WHEREAS, the Seller requires, as a condition of the City’s purchase of the Property, that the Property be used for public library purposes, and the Foundation is prepared to contribute funds to the City for improvements to the Property to facilitate its use for and in support of public library purposes;

WHEREAS, the City is willing to commit to use the Property for public library purposes for a period of fifty-five (55) years following the City’s acquisition of the Property, as more fully set forth herein; and

WHEREAS, the City and the Foundation wish to set forth their mutual understanding of their respective requirements and expectations regarding the City’s acquisition and use of the Property and the Foundation’s contributions and commitments toward such use.

NOW THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the City and the Foundation agree as follows:

## Agreement

1. Improvements and Initial Use of Property. Upon close of escrow for the purchase of the Property, the City will commence improvements to the Property in preparation for (i) use by the Friends of the Oceanside Public Library (“Friends”) for a bookstore on a portion of the main floor and for a book storage and sorting facility on the basement level, and (ii) the relocation of the City-operated READS Learning Center to the Property.
2. Monetary Contribution from Foundation. Within thirty (30) days after close of escrow for the purchase of the Property, the Foundation will provide the sum of five hundred thousand dollars (\$500,000) to the City, to help offset initial improvements to the Property described in Paragraph 1.
3. Use of Property. For fifty-five (55) years following close of escrow for the purchase of the Property (“Term”), the City will use the Property for or in support of public library purposes, as described in and subject to California Education Code sections 18900 *et seq.*, as those statutes may be amended. Such purposes include but are not limited to providing free, equitable access to information, education, and enlightenment for all people, regardless of background. During the Term, the City’s use of the Property will be in support of the Oceanside Public Library’s function as a community-based, non-censored hub for learning, research, and resource sharing, serving to advance knowledge, support literacy, and provide safe, inclusive spaces.
  - a. The parties agree that use of the Property by the Friends for a bookstore and storage and by the Oceanside Public Library for the READS Learning Center, as described in Paragraph 1, above, constitutes use of the Property for or in support of public library purposes. The parties further agree that use of the Property for or in support of public library purposes may also include library staff training, administration and office space, as well as public classes, events and community meetings sponsored or organized by the Oceanside Public Library.
  - b. In the event the Property is no longer being used, in whole or in part, by library services or programs during the Term, the City may rent the Property at fair market rates for non-library purposes, provided that any net revenue from such rental, after deduction of applicable operating expenses and reserves, is allocated to support the Oceanside Public Library.
  - c. Use of the Property during the Term may also include other non-library purposes if and as approved in writing by the Foundation Board as documented by meeting minutes.
4. Naming Rights. During the Term and subject to the City’s review and approval, the Foundation shall have the right to name the Property and the right to design the building signage for the Property. Notwithstanding the foregoing, signage for the Property shall comply with all applicable laws, including Article 33 of the

Oceanside Zoning Ordinance. There shall be no financial gain or exchange of funds payable to the Foundation allowed for such rights from any donor or third party seeking the ability to control these rights.

5. Damage/Destruction of Property. Nothing in this MOU shall impose an obligation on the City to rebuild or restore all or a portion of the Property in the event of damage or destruction of the Property or improvements thereon, due to any cause, including but not limited to fire, flood, wind, earthquake or other natural disaster or hazard. Should the City elect to rebuild or restore the improvements on the Property following such damage or destruction, any expansion beyond the square footage of the existing improvements shall not be subject to this MOU.
6. Remedies/No Money Damages. In the event of a breach of this MOU by either party, the aggrieved party's sole remedy shall be rescission of this MOU and restitution of the consideration provided and described in Paragraphs 2 through 4, above, as applicable. In such case, this MOU shall be of no force or effect, and neither party shall have any further rights or obligations hereunder.
7. Dispute Resolution. In the event of a dispute regarding the use of the Property or any other matter covered by this MOU, the parties agree to negotiate in good faith to settle the dispute. If the dispute cannot be resolved through good-faith negotiations, the parties shall attempt to resolve the dispute through a neutral third-party mediator before pursuing litigation. The cost of such mediation shall be borne equally by the parties.
8. No Agency. Nothing in this MOU shall be construed to authorize either party to act on behalf of the other party as an agent, or to bind the other party to any obligation whatsoever, unless specifically authorized in writing by the other party. Each party shall be solely responsible for the actions of its employees, agents, and volunteers under this MOU.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the parties hereto have executed this MOU by setting hereunto their signatures on the dates set forth below.

OCEANSIDE PUBLIC LIBRARY FOUNDATION

CITY OF OCEANSIDE

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

By: \_\_\_\_\_  
Jonathan Borrego, City Manager

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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

APPROVED AS TO FORM:

Name: \_\_\_\_\_

\_\_\_\_\_  
City Attorney

Title: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT "E"

PROPERTY USE AGREEMENT  
BETWEEN THE CITY OF OCEANSIDE  
AND  
THE OCEANSIDE FRIENDS OF THE PUBLIC LIBRARY  
**FORM OF USE AGREEMENT ATTACHED HERETO**

**EXHIBIT "E"**  
**FORM OF USE AGREEMENT**

**PROPERTY USE AGREEMENT**

**BY AND BETWEEN**

**THE CITY OF OCEANSIDE**

**AND**

**FRIENDS OF THE OCEANSIDE PUBLIC LIBRARY**  
**FOR THE USE OF CITY OWNED REAL PROPERTY**

**LOCATED AT**

**615 MISSION AVENUE**

**DATED**

---

**CITY OF OCEANSIDE  
PROPERTY USE AGREEMENT  
FRIENDS OF THE OCEANSIDE PUBLIC LIBRARY  
FOR PROPERTY AT 615 MISSION AVENUE**

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**CITY OF OCEANSIDE  
PROPERTY USE AGREEMENT  
FRIENDS OF THE OCEANSIDE PUBLIC LIBRARY  
FOR PROPERTY AT 615 MISSION AVENUE**

This Property Use Agreement ("Agreement") dated \_\_\_\_\_ 20\_\_\_\_, (for identification purposes only), is executed by and between the City of Oceanside, a municipal corporation ("City") and Friends of the Oceanside Public Library, a California nonprofit corporation ("Lessee"), collectively referred to as ("Parties").

**RECITALS**

WHEREAS, CITY is the lawful owner of that certain real property, located at 615 Mission Avenue, also known as APN: 147-28-01, in the City of Oceanside which contains a building consisting of approximately 10,000 square feet ("Property") as illustrated in **Exhibit "A,"** attached hereto and as more particularly described herein below; and

WHEREAS, at this time Lessee desires to enter into an Agreement with the City for use of a portion of the building located at 615 Mission Avenue, and City is willing to lease the space to Lessee as set forth within this Agreement.

**AGREEMENT**

NOW THEREFORE in consideration of the covenants, conditions and provisions contained herein, the Parties hereto mutually agree as follows:

**SECTION 1: RECITALS**

**1.01 Incorporation of Recitals.** The terms and provisions of the foregoing Recitals are incorporated herein, as though set forth in full herein.

**SECTION 2: USES:**

**2.01 Premises.**

City hereby authorizes Lessee, in accordance with the terms, covenants, conditions and provisions of this Agreement, the exclusive use of a portion of that certain real property located at 615 Mission Avenue, in the City of Oceanside, County of San Diego, State of California, consisting of approximately 7,000 square feet (to be confirmed prior to occupancy), as more particularly described and depicted in **Exhibit "A,"** attached hereto and by this reference, made part of this Agreement (hereinafter referred to as the "Premises").

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**2.02 Parking Lot.**

Lessee will have the non-exclusive use of the public parking lot located at 115 N. Ditmar Street, on a first-come first-serve basis, as defined and depicted on **Exhibit "A"**, and herein collectively referred to as "Public Parking Lot."

**2.03 Uses.**

It is expressly agreed that the Premises are leased to the Lessee exclusively for the purpose of operating a facility for the intake, sorting, processing and storage of books and other donated items, which will be located in the basement area of the Premises, along with a retail bookstore in the portion of the leased space on the street level. This use may include such other administrative and clerical functions as needed for the foregoing purpose. No other use of the Premises is permitted without approval in writing by the City Manager.

Lessee covenants and agrees to actively and continuously use and operate the Premises for the above specified, limited and particular exclusive use and to diligently pursue said purposes throughout the term of this Agreement, except for failure to so use caused by reasons or events beyond the reasonable control of Lessee and acts of God. In the event that Lessee fails to continuously use the Premises for said purposes, or uses the Premises for purposes not expressly authorized herein, Lessee shall be deemed in default under this Agreement. Lessee shall not use the Premises in any manner that disrupts the quiet enjoyment of surrounding occupants of the remainder of the building.

**2.04 Related Discretionary Actions.**

By the granting of this Agreement, neither City nor the Council of City is obligating itself to any other governmental agent, board, commission, or agency with regard to any other discretionary action relating to occupancy of the Premises. Discretionary action includes, but is not limited to rezoning, variances, conditional use permits, environmental clearances or any other governmental agency approvals which may be required for the development and operation of the Premises.

**2.05 Quiet Possession.**

Lessee, providing the authorized programs and services to the general public and performing the covenants and agreements herein, shall at all times during the term peaceably and quietly have, hold and enjoy the Premises. If during the term Lessee is temporarily dispossessed through action or claim of a title superior to City's, then and in either of such events, this Agreement shall not be voidable nor

**CITY OF OCEANSIDE  
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shall City be liable to Lessee for any loss or damage resulting therefrom. In the event that such dispossession causes an extraordinary economic burden on Lessee, Lessee shall have the option to terminate this Agreement by submitting to the City a **thirty (30) day** written notice together with its justifications for such termination. The City shall have the right to approve such termination and shall provide Lessee with a written determination thereof. Said approval shall not be unreasonably withheld.

**2.06 Reservation of Rights.**

City shall not unreasonably or substantially interfere with Lessee's use of the Premises while Lessee is in possession of the Premises; however, the City specifically retains the following rights:

- A. Subsurface Rights.** City hereby reserves all rights, title and interest in any and all subsurface natural gas, oil, minerals and water on or within the Premises.
- B. Easements.** City reserves the right to grant and use easements or to establish and use rights-of-way over, under, along and across the leased Premises for utilities, thoroughfares, or access as it deems advisable for the public good.
- C. Right to Enter.** City has the right to enter the Premises for the purpose of performing maintenance, inspections, repairs or improvements, or developing municipal resources and services.

City will not reimburse Lessee for damages, if any, to the improvements located on the Premises resulting from the City exercising the rights reserved in this Agreement. City will pay the costs of the maintenance and repair of all City installations made pursuant to these reserved rights. City's use of the Premises is paramount to that of the Lessee's use.

**SECTION 3: TERM**

**3.01 Commencement.**

The term of this Agreement shall be for ten (10) years, commencing on the first day of the month immediately following the date the City provides Lessee access to use the Premises ("Commencement Date") and terminating ten (10) years thereafter ("Expiration Date") together referred to as the ("Term"). The Commencement Date and Leased Premises will be confirmed through a

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Memorandum of Commencement and Leased Premises, attached hereto as Exhibit "C".

**3.02 Renewal Option.**

At the end of the Term, Lessee may request an extension of the Term of this Agreement for the Premises for **three (3) consecutive ten (10) year** periods under the same terms and conditions of this Agreement at the rental rate calculated in Section 4.02 below, provided that the Lessee is not in default or breach of any term, condition, or covenant of this Agreement. Lessee shall provide City with written request to extend the Term of the Agreement, and such notice is to be provided no later than **thirty (30) days** prior to the Expiration Date of the Term of this Agreement. Any renewal options exercised by Lessee as part of this Agreement shall not require additional Council action beyond approval of this Agreement.

In no event shall the term of this Agreement be extended in excess of **thirty (30) years** beyond the Expiration Date of the Term of this Agreement without the mutual written agreement of the Parties and the prior approval by the City Manager or his/her designee.

**3.03 Holdover.**

Any holding over by Lessee after the Expiration Date or termination of the Agreement shall not be considered as a renewal or extension of this Agreement. The occupancy of the Premises by Lessee or by Lessee's property after the expiration or termination of this Agreement constitutes a month-to-month tenancy, and all other terms and conditions of this Agreement shall continue in full force and effect. City may have the right to apply a reasonable monetary rent and to terminate the holdover tenancy at will.

**3.04 Abandonment by Lessee.**

Even if Lessee breaches the Agreement and abandons the Premises, this Agreement shall continue in effect for so long as City does not terminate this Agreement, and City may enforce all its rights and remedies hereunder, including but not limited to the right to recover the rent as it becomes due, plus damages.

**3.05 Quitclaim of Lessee's Interest.**

On termination of this Agreement for any reason, Lessee shall deliver to City a quitclaim deed in recordable form quitclaiming all its rights in and to the Premises.

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Lessee or its successor in interest shall deliver the same within five (5) days after receiving written demand therefor. City may record such deed only on the expiration or earlier termination of this Agreement. If Lessee fails or refuses to deliver the required deed, the City may prepare and record a notice reciting Lessee's failure to execute this lease provision and the notice will be conclusive evidence of the termination of this Agreement and all Lessee's rights to the Premises.

**3.06 Surrender of Premises.**

At the expiration or earlier termination of this Agreement, Lessee shall surrender the Premises to City free and clear of all liens and encumbrances created by Lessee, except those liens and encumbrances which existed on the date of the execution of this Agreement by City. The Premises, when surrendered by Lessee, shall be in a safe and sanitary condition and shall be in as good or better condition as the condition at commencement of this Agreement, absent normal wear and tear.

**3.07 Termination.**

Notwithstanding any other provisions contained in this Agreement, Lessee, but not City, may terminate this Agreement as to all or a portion of the Premises, for any reason, by giving the City at least **ninety (90) days** prior written notice of such termination, unless different terms are agreed to in writing between the Parties for a shorter notice period.

**3.08 Time is of Essence.**

Time is of the essence for all of the terms, covenants, conditions and provisions of this Agreement.

**SECTION 4: RENT**

**4.01 Time and Place of Payment.**

The Lessee shall make all rental payments monthly in advance on or before the tenth day of each new month. Checks should be made payable to the City of Oceanside and delivered to: City of Oceanside, Central Cashiering, 300 North Coast Highway, Oceanside, CA 92054. The place and time of payment may be changed at any time by City upon **thirty (30) days'** written notice to Lessee. Lessee assumes all risk of loss and responsibility for late payment charges. Lessee agrees to pay City an additional **Thirty and NO/100 Dollars (\$30.00)** for

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any returned check, which is not honored by the financial institution from which the check is drawn.

**4.02 Rent.**

**A. Initial Rent Amount.** The initial monthly rent begins on the Commencement Date of the Agreement for the first five (5) years of the Agreement, shall be payable monthly in advance at the rate of **Three Thousand Dollars and NO/100 (\$3,000)** on or before the first day of each month ("Monthly Rent").

City hereby agrees that the programs and services provided by Lessee to the public, on a non-discrimination basis, except for reasonable admission fees and service charges that are usual and customary for similar service at the Premises, are valuable consideration received from Lessee, and that the provision of such programs, services and activities shall constitute a portion of the rent to be paid by Lessee for its use of the Premises in accordance with the terms, covenants, conditions and provisions of this Agreement. Provided that Lessee continues to provide programs and services serving the City of Oceanside, Lessee shall be provided with the discounted rent as set forth herein.

**B. Rental Adjustment Date.** The rental adjustment date shall be on the **sixty-first (61<sup>st</sup>) month** following the Commencement Date (as defined in Section 3.01) of this Agreement. The Monthly Rent amount shall be adjusted on such date as set forth below in Sections 4.02 C and D.

**C. Adjustment Index.** The index used will be the semi-annual Consumer Price Index for "All Urban Consumers" for San Diego, California. If this index is no longer published, the index for adjustment will be the U.S. Department of Labor's "Comprehensive Official Index" most comparable to the aforesaid index.

If the Department of Labor indices are no longer published, another index generally recognized as authoritative will be substituted by agreement of City and Lessee. If the Parties cannot agree within **60 days** after demand by either Party, a substitute index will be selected by the Chief Officer of the Regional Office of the Bureau of Labor Statistics or its successor. Any reference in this Agreement to "CPI" or "index" shall mean the index used in accordance with this Subsection.

Regardless of the index publication dates, the minimum rent adjustment dates shall be on the date defined by Subsection 4.02 B above. Until the minimum rent adjustment can be actually calculated in accordance with this Agreement, Lessee shall continue to make payments at the existing rental rate. When the

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adjustment is calculated, the balance of rents due at the adjusted rate, from the rental adjustment date through the date of calculation, will be paid to City within **30 days** of written notice by the City. In no event shall the adjusted rent as established by the CPI be less than the rent in existence immediately prior to the adjustment date.

**D. Rent Adjustment Computation.** The rent adjustment shall be computed in accordance with the following definitions and formulas:

Definitions:

**Initial Monthly Rent:** The monthly rent at the Commencement Date of this Agreement as listed in Subsection 4.02. A above.

**Existing Monthly Rent:** The existing monthly rent shall be the amount in effect on the date preceding the rental adjustment date.

**Percent change in the CPI:** The percent change in the CPI shall be the percent change in the San Diego All Consumer Index over the preceding **12 month** period covered by the most recent publication of the Index.

Rent Adjustment Formulas:

**First Adjustment:** Initial monthly rent + (Initial monthly rent x the percent change in the CPI) = New monthly rent.

For example:  $\$200 + (\$200 \times 2\%) = \$204.00$

**Subsequent Adjustments:** New monthly rent + (new monthly rent x the percent change in the CPI) = Adjusted monthly rent.

For example:  $\$204 + (\$204 \times 4\%) = \$212.16$

**4.03 Rent During Renewal Terms.**

The Monthly Rent in effect in the previous month to the effective date of each renewal term shall be adjusted to increase at the commencement of each renewal term and thereafter on each **sixty-first (61<sup>st</sup>) month** of each renewal term. The Monthly Rent increase shall be calculated by the current CPI as outlined in Sections 4.02 C and D above.

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**4.04 Delinquent Rent.**

If applicable at any time during the term of the Agreement, if Lessee fails to pay the rent when due, Lessee will pay in addition to the unpaid rents, five percent (5%) of the delinquent rent. If the rent is still unpaid at the end of fifteen (15) days from the due date, Lessee shall pay an additional five percent (5%) [being a total of ten percent (10%)] which is hereby mutually agreed by the parties to be appropriate to compensate City for loss resulting from rental delinquency, including lost interest, opportunities, legal costs, and the cost of servicing the delinquent account.

**4.05 Security Deposit.**

None

**4.06 Annual Program Reporting.**

As additional consideration, Lessee shall be required to provide City with a written annual financial and operations reports regarding all phases of Lessee's use and occupation of the Premises. Lessee shall submit said report to City within **sixty (60) days** following each anniversary date of this Agreement.

**4.07 Inspection of Records.**

Lessee agrees to make any and all records and accounts available to City for inspection at all reasonable times, so that City can determine Lessee's compliance with this Agreement. These records and accounts will be made available by Lessee at the Premises and will be complete and accurate showing all income and receipts from the use of the Premises, as well as all records supporting Section 4.06, Annual Program Reporting, as defined therein. Lessee's failure to keep and maintain such records and make such records available for inspection by City shall be deemed a default of this Agreement. All such operations and financial reports and related information shall be deemed to be public records. Lessee shall maintain all such records and accounts for a minimum period of **five (5) years**.

**SECTION 5: INSURANCE RISKS/SECURITY**

**5.01 Indemnity.**

Lessee, on behalf of itself and any of its agents, shall indemnify, defend and to the greatest extent allowed by law, hold harmless City, its City Council, boards and commissions, officers, directors, employees, agents and volunteers

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(collectively, the “Indemnified Parties”) from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorneys’ fees, disbursements and court costs) of every kind and nature whatsoever (individually, a “Claim”, collectively “Claims”), arising from or in any manner related (directly or indirectly) to any breach of the terms and conditions of this Agreement by Lessee or its agents; Lessee’s use or occupation of the Premises; any work performed or services provided under this Agreement by Lessee or its agents, including, without limitations, defects in workmanship or materials; or Lessee’s or its agents’ presence or activities that relate in any way to this Agreement (including the negligent and/or willful acts, errors and/or omissions of Lessee, its employees, vendors, agents, suppliers, and anyone employed directly or indirectly by any of them or for whose acts they may be liable ). Notwithstanding the foregoing, nothing herein shall be construed to require Lessee to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties. Nothing in this indemnity shall be construed as authorizing any award of attorneys’ fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the Lessee.

**5.02 Insurance.**

Without limiting Lessee’s indemnification of the Indemnified Parties provided for herein, and prior to commencement of this Agreement, Lessee shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance with the endorsements of the type, amounts, terms and conditions described in the Insurance Requirements attached hereto as Exhibit “B” and incorporated herein by reference.

**5.03 Accident Reports.**

Lessee shall report to City any accident within **seventy-two (72) hours** relating to property damage or any serious injury to persons on the Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour of the incident, the names and addresses of any witnesses and other pertinent information.

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**5.04 Waiver of Subrogation**

Notwithstanding anything herein to the contrary, neither party shall be liable to the other for any business interruption or any loss or damage to property or injury to or death of persons occurring in or on the Premises, or in any manner growing out of or connected with Lessee's uses and occupation of the Premises, or the condition thereof, whether caused by the negligence or other fault of City or Lessee, or of their respective agents, employees, subtenants, licensees, or assignees. This release shall apply to the extent that such business interruption, loss, or damage to property or injury to or death of persons is covered by insurance, regardless of whether such insurance is payable to or protects City or Lessee, or both. Nothing herein shall be construed to impose any other or greater liability upon either City or Lessee than would have existed in the absence of this provision. This release shall be in effect only so long as the applicable insurance policies contain a clause to the effect that this release shall not affect the right of the insured and additional insured to recover under such policies. Such clauses shall be obtained whenever possible.

**SECTION 6: IMPROVEMENTS/ALTERATIONS/REPAIRS**

**6.01 Acceptance of Premises.**

Lessee represents and warrants that it has independently inspected the Premises and made all tests, investigations, and observations necessary to satisfy itself of the condition of the Premises. Lessee acknowledges it is relying solely on such independent inspection, tests, investigations, and observations in making this Agreement. Lessee further acknowledges that the Premises are in an "as-is" condition and that Lessee does not hold City responsible for any defects in the Premises.

**6.02 Waste, Damage, or Destruction.**

Lessee shall give notice to City of any fire or other damage that occurs on the Premises within **forty-eight (48) hours** of such fire or damage. Lessee shall not commit or suffer to be committed any waste or injury or any public or private nuisance, to the Premises and shall keep the Premises clean and clear of refuse and obstructions, and dispose of all garbage, trash, and rubbish in a manner satisfactory to City. If the Premises shall be damaged by any cause which puts the Premises into a condition which is not decent, safe, healthy and sanitary, Lessee agrees to make or cause to make full repair of said damage and/or to restore the Premises to the condition which existed prior to said damage; or, at City's option, and upon receipt of written demand thereof, Lessee agrees to clear

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and remove from the Premises all debris resulting from said damage and rebuild the Premises in accordance with plans and specifications previously submitted to City and approved in writing in order to replace in kind and scope the operation that existed prior to such damage. Lessee shall be responsible for all costs incurred in the repair and restoration, or rebuilding of the Premises.

**6.03 Maintenance.**

City agrees to assume full responsibility for maintenance of the Premises throughout the term of the Agreement. City will make all repairs and replacements necessary to maintain and preserve the Premises in a decent, safe, healthy, and sanitary condition and in compliance with all applicable laws. In addition, City will keep the roof, foundation structural columns in good repair. City shall not, however, be liable to Lessee hereunder unless Lessee has given City prior written notice of the necessity for such repairs and/or maintenance, and any damage arising therefrom shall not have been caused, in whole or in part by the negligent or willful act or omission of Lessee, its employees, agents or invitees, or by the failure of Lessee to perform any of its obligations under this Agreement, or caused by any risk which Lessee is required to insure pursuant to Section 5 of this Agreement.

In the event that the Premises are not in a decent, safe, healthy, and sanitary condition, City shall have the right, upon written notice to Lessee, to enter the Premises to have any necessary work done. The rights reserved in this section shall not create or increase any obligations elsewhere in this Agreement imposed on City.

**6.04 Improvements/Alterations.**

No improvements, structures, or installations shall be constructed on the Premises, and the Premises may not be altered by Lessee without prior written approval by the City Manager or designee. Further, Lessee agrees that major structural or architectural design alterations to approved improvements, structures, or installations may not be made on the Premises without prior written approval by the City Manager or designee and that such approval shall not be unreasonably withheld. This provision shall not relieve Lessee of any obligation under this Agreement to maintain the Premises in a decent, safe, healthy, and sanitary condition. City shall not be obligated by this Agreement to make or assume any expense for any improvements or alterations installed by Lessee, except for the improvements that will be completed prior to the Commencement Date of this Agreement by the City, that include adding a demising wall on the first floor of the Property to separate the bookstore from the remainder of the first floor, the addition

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of a private entry door to this space, painting the interior and installation of carpet or luxury vinyl flooring to the first floor only. City will also be installing an elevator on the Property for access to the basement. Any alternations or improvements made by Lessee to the Premises shall be made at that the Lessee's sole cost.

**6.05 Utilities.**

City agrees to order, obtain, and pay for gas, electricity, water, trash and sewer services and installation charges in connection with the operation of these utility services at the Premises. Lessee shall order, obtain, and pay for all installation in connection with the operation of phone and internet services at the Premises.

**6.06 Liens.**

Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the Premises without the prior written consent of the City Manager. Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim on or with respect to all or any portion of the Premises for which Lessee does not have the prior written consent of the City Manager or designee.

**6.07 Taxes.**

Lessee shall pay, before delinquency, all taxes, assessments, and fees assessed or levied upon Lessee for its machines, equipment, appliances, or other improvements or property of any nature whatsoever erected, installed, or maintained by Lessee or levied by reason of the business or other Lessee activities related to the Premises, including any licenses or permits.

Lessee recognizes and agrees that this Agreement may create a possessory interest subject to property taxation, and that Lessee may be subject to the payment of taxes levied on such interest, and that Lessee shall pay all such possessory interest taxes.

**6.08 Signage.**

Lessee shall not erect or display any banners, pennants, flags, posters, signs, decorations, marquees, awnings, or similar devices or advertising without the prior written consent of City as owner of the property. If any such unauthorized item is found on the Premises, Lessee shall remove the item at its expense within 24 hours

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of written notice thereof by City, or City may thereupon remove the item at Lessee's cost.

**6.09 Ownership of Improvements and Personal Property.**

Any and all leasehold improvements, structures, and installations or additions to the Premises now existing or constructed on the Premises by Lessee shall at Agreement expiration or termination be deemed to be part of the Premises and shall become, at City's option, City's property, free of all liens and claims except as otherwise provided in this Agreement.

**6.10 Entry and Inspection.**

City reserves and shall always have the right to enter said Premises for the purpose of viewing and ascertaining the condition of the same, or to protect its interest in the Premises, or to inspect the operations conducted thereon. In the event that such entry or inspection by City discloses that said Premises are not in decent, safe, healthy, and sanitary condition (and Lessee has not previously notified City of such condition), City shall have the right, after five (5) days written notice to Lessee, to have any necessary maintenance or repair work done at the expense of Lessee, and Lessee hereby agrees to pay promptly any and all costs incurred by City in having such necessary maintenance or repair work done, in order to keep said Premises in a decent, safe, healthy, and sanitary condition.

In addition to the above, City or any contractor or subcontractor representing City shall have the right to enter the premises for the purpose of conducting any maintenance operations. All such maintenance work shall be in accordance with plans and specifications approved by City and shall be accomplished in a manner so as to minimize interference with Lessee's operation of the leasehold.

**SECTION 7: GENERAL PROVISIONS**

**7.01 Notices.**

All notices, demands, requests, consents or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party as follows:

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To City:

City of Oceanside  
Property Management  
300 North Coast Highway  
Oceanside, CA 92054  
ATTN: Real Estate Manager  
Phone: (760) 435-5014  
Email: [vgutierrez@oceansideca.org](mailto:vgutierrez@oceansideca.org)

To Lessee:

Friends of the Oceanside Public Library  
ATTN: Chris Wilson, President  
330 N Coast Hight  
Oceanside, CA 92054  
Email: [gwsuperfan@gmail.com](mailto:gwsuperfan@gmail.com)  
Phone: (760) 560-8752

Either Party may change its address by notice to the other party as provided herein. Communications shall be deemed to have been given and received on the first to occur of (i) actual receipt at the offices of the party to whom the communication is to be sent, as designated above, or (ii) three working days following the deposit in the United States Mail of registered or certified mail, postage prepaid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

**7.02 City Approval.**

The City Manager shall be the City's authorized representative in the interpretation and enforcement of all work performed in connection with this Agreement. The City Manager may delegate authority in connection with this Agreement to the City Manager's designee(s). For the purposes of directing Lessee in accordance with this Agreement, which does not result in a change to this Agreement, the City Manager delegates authority to the City's Real Estate Manager.

**7.03 Nondiscrimination.**

Lessee agrees not to discriminate in any manner against any person or persons on account of race, marital status, sex, religious creed, color, ancestry, national origin, age, or physical handicap in Lessee's use of the Premises.

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**7.04 Equal Opportunity.**

Lessee agrees to abide by City's Equal Opportunity Policy as it exists or is amended to the extent that the program is applicable to this Agreement. A copy of the program effective as of the date of this Agreement is on file with the City Clerk's Office.

**7.05 Entire Agreement.**

This Agreement comprises the entire integrated understanding between City and Lessee concerning the use and occupation of the Premises and supersedes all prior negotiations, representations, or Agreements. Each party has relied on its own examination of the Premises, advice from its own attorneys, and the warranties, representations, and covenants of the Agreement itself.

**7.06 Interpretation of the Agreement.**

The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to City. The Lessee shall be responsible for complying with all Local, State, and Federal laws whether or not said laws are expressly stated or referred to herein. Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**7.07 Agreement Modification.**

This Agreement may not be modified orally or in any manner other than by an Agreement in writing signed by the parties hereto.

**7.08 Waiver.**

Any City waiver of a default is not a waiver of any other default. Any waiver of a default must be in writing and be executed by the City Manager in order to constitute a valid and binding waiver. City delay or failure to exercise a remedy or right is not a waiver of that or any other remedy or right under this lease. The use of one remedy or right for any default does not waive the use of another remedy or right for the same default or for another or later default. City's acceptance of

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any rents is not a waiver of any default preceding the rent payment. City and Lessee specifically agree that the property constituting the Premises is City-owned and held in trust for the benefit of the citizens of the City of Oceanside and that any failure by the City Manager or City staff to discover a default or take prompt action to require the cure of any default shall not result in an equitable estoppel, but City shall at all times, subject to applicable statute of limitations, have the legal right to require the cure of any default when and as such defaults are discovered or when and as the City Council directs the City Manager to take action or require the cure of any default after such default is brought to the attention of the City Council by the City Manager or by any concerned citizen.

**7.09 Dispute Resolution.**

Any controversy or claim arising out of or relating to this Agreement, or concerning the breach or interpretation thereof, shall be settled first by submission of the matter to mediation the cost of which shall be borne equally by the parties hereto.

**7.10 Assignment and Subletting-No Encumbrance.**

This Agreement and any portion thereof shall not be assigned, transferred, or sublet, nor shall any of the Lessee's duties be delegated, without the express written consent of City, said consent shall not be unreasonably withheld. Any attempt to assign or delegate this Agreement without the express written consent of City shall be void and of no force or effect. A consent by City to one assignment, transfer, sublease, or delegation shall not be deemed to be a consent to any subsequent assignment, transfer, sublease, or delegation.

**7.11 Defaults and Termination.**

If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party and demand the default to be cured within thirty (30) days of the notice.

If the defaulting party is actually in default of this Agreement and fails to cure the default within thirty (30) days of the notice, or, if more than thirty (30) days are reasonably required to cure the default and the defaulting party fails to give adequate assurance of due performance within ten (10) days of the notice, the demanding party may terminate this Agreement upon written notice to the defaulting party.

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City may also terminate this Agreement upon written notice to Lessee in the event that:

- A.** Lessee has previously been notified by City of Lessee's default under this Agreement and Lessee, after beginning to cure the default, fails to diligently pursue the cure of the default to completion; or
  - B.** Lessee shall voluntarily file or have involuntarily filed against it any petition under any bankruptcy or insolvency act or law; or
  - C.** Lessee shall be adjudicated a bankruptcy; or
  - D.** Lessee shall make a general assignment for the benefit of creditors.
- Upon termination, City may immediately enter and take possession of the Premises.

**SECTION 8: SPECIAL PROVISIONS**

**8.01 Standards of Operation.**

Lessee agrees that it shall operate and manage the services and facilities offered upon or from the Premises in a first-class manner and comparable to other similar facilities within San Diego County and Southern California areas which provide like products and services.

**8.02 Hours of Operation.**

Lessee agrees that it shall conduct business on the Premises to conform with the published hours and days of operation as established, and in the best interest of the public.

**8.03 Continued Occupancy.**

Lessee covenants and agrees to, and it is the intent of this Agreement that the Lessee shall, continuously and uninterrupted during the term of the Agreement, occupy and use the Premises for the purposes herein above specified, except while Premises are untenable by reason of fire, flood, or other unavoidable casualty, and, in that event, City shall be promptly notified by Lessee.

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**8.04 Hazardous Substances.**

No goods, merchandise or material shall be kept, stored or sold in or on the Premises which are in any way explosive or hazardous, except that ordinary business materials that may be classified as hazardous may be kept in or on the Premises if such materials are stored and disposed of in accordance with all applicable laws; and no offensive or dangerous trade, business or occupation shall be carried on therein or thereon, and nothing shall be done on said Premises, which will cause an increase in the rate of or cause a suspension or cancellation of the insurance upon the demised Premises or other premises and the improvements thereon; provided, however, that if anything done by Lessee causes an increase in the rate of insurance on the Premises, Lessee may, at its option, pay such increase and Lessee shall not thereafter be considered in default under this Agreement.

No machinery or apparatus shall be used or operated on or about the Premises which will in any way injure the Premises or improvements thereon, or adjacent or other premises, or improvements thereon, or to persons; provided, however, that nothing contained in this section shall preclude Lessee from bringing, keeping or using on or about the Premises such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its said business, or from carrying on its business in all usual respects.

Open flame welding or burning, gasoline, or other fuel storage is expressly prohibited without prior written consent of the City.

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**SECTION 9: SIGNATURES**

**9.01 Signature Page.**

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Lessee and the City.

IN WITNESS WHEREOF the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Property Lease Agreement to be executed by setting hereunto their signatures on the day and year respectively written hereinbelow.

**CITY**

**APPROVED AS TO FORM**

THE CITY OF OCEANSIDE  
a municipal corporation

By \_\_\_\_\_  
City Attorney

By \_\_\_\_\_  
Jonathan Borrego, City Manager

Date: \_\_\_\_\_

**PERMITTEE**

FRIENDS OF THE OCEANSIDE PUBLIC LIBRARY  
a California nonprofit corporation

By \_\_\_\_\_  
Chris Wilson, President

Date: \_\_\_\_\_

**NOTARY ACKNOWLEDGMENTS OF LESSEE'S SIGNATURE(S) MUST BE ATTACHED**

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**Exhibit "A"  
PROPERTY, PREMISES & PUBLIC PARKING LOT**



**Premises:** Consisting of approximately 7,000 square feet of the building on City Property shown above.

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**Exhibit "B"  
Insurance Requirements**

1. **Provision of Insurance.** Without limiting Lessee's indemnification of the Indemnified Parties, and prior to commencement of this Agreement, Lessee shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance with the endorsements of the type, amounts, terms and conditions described below, and in a form satisfactory to City. Lessee agrees to provide insurance in accordance with the requirements set forth herein. If Lessee uses existing coverage to comply and that coverage does not meet these requirements, Lessee agrees to amend, supplement or endorse the existing coverage.
2. **Acceptable Insurers.** All insurance policies shall be issued by an insurance company currently admitted by the Insurance Commissioner to transact business of insurance in the State of California, or with an assigned policyholders' rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City Attorneys' Office.
3. **Insurance Coverage Requirements.**

A. **General Liability Insurance.**

Combined Single Limit Per Occurrence	\$2,000,000
General Aggregate	\$4,000,000

Lessee shall maintain general liability insurance, and if necessary, umbrella liability insurance, with coverage at least as broad as provided by Insurance Services Office form CG 00 01, in an amount not less than two million dollars (\$2,000,000) per occurrence, four million dollars (\$4,000,000) general aggregate. The policy shall cover liability arising from premises, operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract) with no endorsement or modification limiting the scope of coverage for liability assumed under a contract.

B. **Automobile Liability Insurance.**

Combined Single Limit	\$1,000,000
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Lessee shall maintain automobile insurance at least as broad as Insurance

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Services Office form CA 00 01 covering bodily injury and property damage for all activities of Lessee arising out of Lessee's use of the Premises under this Agreement or in connection with work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rental vehicles, in an amount not less than one million dollars (\$1,000,000) combined single limit each accident.

C. **Workers' Compensation Insurance.**  
Statutory Limits

D. **Umbrella or Excess Insurance Policy.**

Lessee may use Umbrella or Excess Policies to provide the liability limits as required in this Agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage as least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until Lessee's primary and excess liability policies are exhausted.

**Endorsements Required To Be Provided to City.**

**A. Additional Insured Status.** All liability policies including general liability, excess liability, umbrella coverage, and automobile liability, if required, but not including professional liability, shall provide or be endorsed to provide that City and its officers, officials, directors, employees, agents and volunteers shall be included as additional insureds under such policies.

**B. Waiver of Subrogation.** All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected and appointed officers, officials, agents, directors, employees and volunteers. Lessee hereby waives its own right of recovery against City, and shall require similar written express waivers from each of its subcontractors and/or sub-lessees, if any.

**C. Primary and Non-Contributory.** All liability coverage shall apply on a primary basis and shall not require contribution from any insurance or self-

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insurance maintained by City.

**D. Notice of Cancellation.** All policies shall provide City with thirty (30) calendar days' notice of cancellation (except for nonpayment for which ten (10) calendar days' notice is required) or nonrenewal of coverage for each required coverage.

**4. Additional Provisions.**

- A. **Evidence of Insurance.** Lessee shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with the other required endorsements specified above. Insurance certificates and endorsements must be approved by the City Attorneys' Office (or City's Risk Manager) prior to commencement of performance. Current certification of insurance and endorsements shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- B. **City's Right to Revise Requirements.** City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required by giving Lessee sixty (60) calendar days advance written notice of such change.
- C. **Requirements not Limiting.** Requirements of specific coverage features or limits contained in this **Exhibit "C"** are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.
- D. **Self-Insured Retentions.** Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these requirements unless approved by the City.
- E. **City Remedies for Non-Compliance.** If Lessee or any subcontractor fails to provide and maintain insurance as required herein, then City shall have the right but not the obligation, to purchase such insurance at Lessee's expense, to terminate this Agreement, or to suspend Lessee's right to proceed until proper evidence of insurance is provided.

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- F. **Timely Notice of Claims.** Lessee shall give City prompt and timely notice of claims made or instituted that arise out of or result from Lessee's operations or performance under this Lease, and that involve or may involve coverage under any of the required liability policies. City assumes no obligation or liability by such notice, and has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
- G. **Lessee's Insurance.** Lessee may also procure and maintain, at its own cost and expense, any additional kinds of insurance which, in its own judgment, may be necessary for its proper protection and prosecution of its operations and work.
- H. **Accident Reporting.** Lessee shall, within 72 hours after occurrence, report to City any accident causing property damage or any serious injury to persons on the Leased Premises. This report shall contain the names and addresses of the parties involved, a statement of the circumstances, the date and hour, the names and addresses of any witnesses and other pertinent information.
- I. **Available Excess Insurance.** If Lessee maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Lessee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
- J. **Enforcement of Agreement Provisions.** Lessee acknowledges and agrees that any actual or alleged failure on the part of City to inform Lessee on non-compliance with any requirement imposes no additional obligations on City nor does it waive any rights hereunder.

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**Exhibit "C"  
MEMORANDUM OF COMMENCEMENT**

This Commencement Date Memorandum, dated \_\_\_\_\_, 20\_\_ is executed between the CITY OF OCEANSIDE, a municipal corporation ("City") and FRIENDS OF THE OCEANSIDE PUBLIC LIBRARY, a California non-profit corporation ("Lessee").

**RECITALS**

WHEREAS, City and Lessee have entered into that certain Property Use Agreement ("Agreement") dated \_\_\_\_\_, 20\_\_, for the use of real property located at 615 Mission Avenue in the City of Oceanside, County of San Diego, State of California; and

WHEREAS, pursuant to the terms of the Agreement, the parties are to execute a memorandum to confirm the commencement date of the Agreement.

**AGREEMENT**

NOW, THEREFORE, in consideration of the conditions and covenants contained herein, the parties hereto mutually agree as follows:

The City and Lessee agree that the commencement date of the Agreement is \_\_\_\_\_, 20\_\_ and the termination date is \_\_\_\_\_, 20\_\_, unless further extended pursuant to the terms of the Agreement.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the above, as of the day and year first written above.

**"CITY"**

THE CITY OF OCEANSIDE  
a municipal corporation

By: \_\_\_\_\_  
Jonathan Borrego  
City Manager

**"LESSEE"**

FRIENDS OF THE OCEANSIDE PUBLIC LIBRARY  
a California non-profit corporation

By: \_\_\_\_\_  
Chris Wilson, President