

CALIFORNIA COMMERCIAL LEASE AGREEMENT

This COMMERCIAL LEASE AGREEMENT is made and effective on _____, 2015, by and between the parties, MAGNASCO INVESTMENTS, a General Partnership registered in the State of California ("Lessor"), and the City of Stockton, a Municipal Corporation ("Lessee") (collectively referred to as "Parties").

1. PREMISES:

- (a) Lessor is the owner of land and improvements of the commercial property known and numbered as 19059 E. Highway 26, Linden, San Joaquin County, California ("Premises").

2. INITIAL TERM:

- (a) Parties agree the Lessor will lease the Premises to the Lessee, and the Lessee will lease the Premises from the Lessor for an Initial Term of three (3) years, beginning September 1, 2015 and ending August 31, 2018, unless terminated in accordance with any provision below.

3. RENEWAL TERM:

- (a) If Lessee elects, and Lessor agrees, this Lease will extend beyond the Initial Term for a Renewal Term of three (3) years, commencing September 1, 2018 and terminating August 31, 2021, provided that:
 - i. No material default or breach of this Lease will have occurred and be continuing; and
 - ii. Written notice of Lessee's election to renew the Lease is delivered to Lessor by May 31, 2018.
- (b) The Renewal Term is subject to the same terms and conditions as are contained in this Lease, except that the monthly Lease payment for the Renewal Term shall be as specified in paragraph 4 below.
- (c) In the event that the Renewal Term conditions are not satisfied, the Lease shall terminate without further obligation by either party.

4. LEASE PAYMENTS:

- (a) For the Initial Term, Lessee will pay to Lessor a monthly amount of \$2,250.00 in advance, on the first day of each calendar month, and in no event after the fifth day of each month.
- (b) Each monthly payment must be delivered to Lessor's Agent, at 10933 E. Highway 26, Linden, California 95236, or at other such place designated by written notice from Lessor to Lessee.
- (c) Failure by Lessee to deliver payment due to Lessor by the fifth day of each calendar month will constitute default, and will be subject to a late payment penalty of \$110 for each calendar month until cured.
- (d) The monthly Lease payment for the three-year Renewal Term will be \$2,400.00 for the period from September 1, 2018 through August 31, 2021.

- (e) Should Lessee hold over said premises beyond either the Initial or Renewal Term, such tenancy shall be from month-to-month, but shall otherwise be subject to the terms and conditions of this Lease, so far as the same may be applicable.

5. SECURITY DEPOSIT:

- (a) Lessee presently has on deposit with Lessor the sum of \$3,200.00, which will be held by the Lessor without interest, as security for the performance of Lessee's obligations under this Lease, including without limitation the surrender of possession of the premises to Lessor as herein provided.
- (b) If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand, deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this Lease.

6. USE OF PREMISES:

- (a) Lessee shall use the leased premises for conducting a public library.

7. CONDUCT OF BUSINESS:

- (a) Lessee agrees to conduct its activities in accordance with applicable laws and regulations and not commit or condone any violation of law upon the leased premises. The commencement of any abatement proceedings affecting the use of the leased premises shall, at the opinion of the Lessor, be deemed to be a breach of the Lease.

8. TAXES:

- (a) Lessor shall pay, prior to delinquency, all general real estate taxes and installments of special assessments coming due during the Lease term on the Leased Premises, and all personal property taxes with respect to Lessor's personal property, if any, on the Leased Premises.
- (b) Lessee will be responsible for paying all personal property taxes with respect to Lessee's personal property on the Leased Premises.
- (c) As a Municipal Corporation, Lessee is not subject to personal property tax in the State of California. In the event any taxes on personal property placed on the leased premises by the Lessee are levied against Lessor or Lessor's property, Lessor must provide evidence and notice to Lessee of such assessment and Lessee will pay directly the Governmental agency levying such personal property taxes.
- (d) In the event a law is passed by the State or County legislature that changes the manner in which property taxes are assessed to commercial parcels, resulting in increased property taxes, Lessor may provide evidence of increase to Lessee, and request Lessee pay a proportional share of the property tax increase that resulted from new legislation, based on a square footage.

9. MAINTENANCE:

- (a) Lessee is and will remain responsible for maintenance and janitorial costs of the Premise interior.

- (b) Lessee will be responsible for repairs to the interior of the leased premises up to and including the amount of \$1,000.00 per Lease year (September 1 through August 31).
- (c) Regardless of amount, Lessee will be responsible for damage or repair caused by or resulting from the act, omission, or fault of Lessee or any person upon the premises with Lessee's consent.
- (d) Lessor will be responsible for maintenance and repair to the Premise interior in excess of \$1,000 per Lease year (September 1 through August 31)
- (e) Other than these Lessee's obligations, Lessor is and will remain responsible for the maintenance and repairs to the leased premise exterior and mechanical systems.
- (f) Lessee shall, at Lessee's sole cost and expense, keep and maintain the premises in a clean and sanitary order and condition in compliance with all orders, rules, statutes, and ordinances of the County of San Joaquin, the State of California, and all appropriate governmental agencies.

10. ALTERATIONS AND IMPROVEMENTS:

- (a) Lessee, at Lessee's expense, will have the right, following Lessor's consent, to remodel, redecorate, and make additions, improvements, and replacements of and to all or any part of the Leased Premises from time to time, as Lessee may deem desirable. Any alterations to the premises must be undertaken and performed in compliance with all laws, building codes, and regulations in effect at the time the work is performed.
- (b) Lessee will notify Lessor in writing of any alteration or improvement plan. Lessor must effectively deliver any objection to Lessee's alteration or improvement plan to Lessee, in writing, within 20 calendar days of receipt of Lessee's plan.
- (c) Lessee will have the right to place and install personal property, trade fixtures, equipment, and other temporary installations in and upon the Leased Premises, and fasten the same to the premises.
- (d) All personal property, equipment, machinery, trade fixtures, and temporary installations, whether acquired by Lessee at the commencement of the Lease term or placed or installed on the Leased Premises by Lessee thereafter, shall remain Lessee's property free and clear of any claim by Lessor.
- (e) Lessee shall have the right to remove the same at any time during the term of this Lease, provided that all damage to the Leased Premises caused by such removal shall be repaired by Lessee at Lessee's expense.
- (f) Lessor shall have no liability to Lessee for failure to effectuate any repairs which it may be required to perform unless first notified in writing of the necessity thereof. At the expiration of this Lease, Lessee shall surrender possession of the leased premises to Lessor in as good order and condition as reasonable and proper use thereof will permit.

11. DAMAGE AND DESTRUCTION:

- (a) Subject to Section 19, if the Leased Premises or any part thereof or any appurtenance thereto is so damaged by fire, casualty, or structural

defects that render the Premise unsuitable for Lessee's intended use, then Lessee will have the right within thirty (30) days following damage to elect by written notice to Lessor to terminate this Lease as of the date of such damage.

- (b) In the event of minor damage to any part of the Leased Premises, those which do not render the Leased Premises unusable for Lessee's purposes, Lessor must promptly repair such damage at the cost of the Lessor.
- (c) In making the repairs called for in this section, Lessee shall be relieved from paying rent and other charges during any portion of the Lease terms that the Leased Premises are inoperable or unfit for occupancy, or use, in whole or in part, for Lessee's purposes. Rentals and other charges paid in advance for any such periods shall be credited on the next ensuing payments, if any, but if no further payments are to be made, any such advance payments shall be refunded to Lessee.
- (d) The provisions of this section extend not only to the matters aforesaid, but also to any occurrence which is beyond Lessee's reasonable control and which renders the Leased Premises, or any appurtenance thereto, inoperable or unfit for occupancy or use, in whole or in part, for Lessee's purposes.

12. DEFAULT:

- (a) In case of default of any terms or condition of this Lease agreement after the effective service of a valid ten (10)-day notice of default, or if the Lessee shall abandon and vacate said premises, the Lessor, without other demand or notice and whenever necessary, may avail itself of any of the following remedies:
 - i. Lessor has the right to elect to declare all rent installments to be paid over the term of this Lease due and payable, in one installment, and to file an action for said installments.
 - ii. Enter into possession of said premises, as agents, and on account of the Lessee, and lease or rent from time to time the whole or any part of the premises, for a balance of the term of the Lease, or any part thereof, on such terms, and for such rent as the Lessor may deem proper, and may retain such rents and apply same to the rent due under this Lease. If after paying the expenses of re-letting a sufficient sum shall not be realized to pay the rent of this Lease, the Lessee agrees to pay and satisfy any deficiency, plus the costs spent in preparing the premises for the new Lessee or Lessees, said rents to accrue monthly. Lessor is to have the election of bringing suit monthly or waiting for a period of time before filing suit.
 - iii. Lessor shall have the option of terminating the Lease, and by the use of reasonable force recovering possession of the premises on its own account with or without court action, together with fees, costs, and back rent due.
 - iv. Lessor may allow Lessee to remain in possession and sue for the delinquent rent.
 - v. Lessor may file an action in unlawful detainer or avail itself of any other remedy granted to it by law, including, but not limited to, the

remedies provided by the above provisions. These rights are not mutually exclusive, and from time to time Lessor may elect to use different remedies or the same remedy more than once. In the event the possession of the lease premises are recovered by the Lessor, Lessee agrees to pay all costs of moving and all storage of property left upon the premises, which will be deemed abandoned at the election of the Lessor.

13. UTILITIES:

- (a) Lessee shall pay all charges for services and utilities used by Lessee on the Leased Premises during the term of this Lease unless otherwise expressly agreed in writing by Lessor.
- (b) In the event that any utility or service provided to the Leased Premises is not separately metered, Lessor shall pay the amount due and separately invoice Lessee for Lessee's pro rata share of the charges. Lessee shall pay such amounts together with the next monthly Lease installment.

14. HEATING AND AIR CONDITIONING:

- (a) Lessor shall install a new heating and cooling system and applicable equipment within 30 days of the Lease being signed by both parties, or October 1, 2015, whichever is later.
- (b) Lessor agrees to hire at its own expense not less often than annually, a heating and air conditioning contractor to service the heating and cooling equipment and to provide verification to Lessee.
- (c) Except for any damage or loss to the heating and cooling equipment caused by or resulting from the act, omission, or fault of Lessee or any person upon the premises with Lessee's consent, the cost of service, repair, and or replacement of all mechanical systems and exterior facility will remain the sole responsibility of Lessor.

15. ENTRY TO SHOW PREMISES:

- (a) Within 89 days prior to the expiration of the Initial Lease Term, or if extended, the Renewal Lease Term, Lessee agrees to permit Lessor, or Lessor's agent, with 24 hours advance notice, the right to enter and examine the Premises, for the purpose of showing the Premises to prospective Lessees or buyers.

16. FIXTURES AND EQUIPMENT:

- (a) Lessee shall at its own cost and expense furnish and install in the leased premises all furniture, fixtures, and equipment deemed by the Lessee to be necessary for the conducting of the Lessee's activities in said premises.
- (b) Removal shall be done with as little damage as possible to the premises and upon such removal the Lessee shall restore the premises to their original condition, ordinary wear and tear excepted.
- (c) All alterations, improvements, or additions made by the Lessor to the leased premises, shall be the property of Lessor, and shall remain upon and be surrendered with the leased premises at the termination of the Lease.

- (d) Lessee shall not overload the premises or install any commercial machinery without the written consent of the Lessor and all damage or injury done to the premises as a direct result of unauthorized machinery installation shall be paid for by Lessee. All electric wiring and plumbing and the location thereof shall be subject to written approval of Lessor prior to installation.

17. TERMINATION:

- (a) In the event that the Renewal Term conditions are not satisfied, the Lease shall terminate without further obligation by either party.
- (b) At the termination of this Lease, any alterations or additions made to the leased premises by the Lessee, at the option of the Lessor, shall be removed by the Lessee.
- (c) This Lease shall terminate if the premises become unfit for the intended purpose because of dilapidation, condemnation, fire, or other casualty.
- (d) In the event of adjudication of the bankruptcy of Lessee or in the event a receiver is appointed by a court of competent jurisdiction for the administration of Lessee's affairs, or in the event of an assignment made by Lessee of Lessee's assets (whether including or excluding this Lease) for the benefit of Lessee's creditors, this Lease shall, at the option of the Lessor, forthwith cease and terminate.

18. HAZARDOUS MATERIALS:

- (a) The Lessee shall not keep or store in the leased premises any hazardous materials. If the Lessee installs any electrical equipment that overloads the lines in the leased premises, the Lessee shall at its own expense make whatever changes are necessary to comply with the requirements of any competent public authority.

19. WASTE OR NUISANCE:

- (a) The Lessee shall not suffer or commit any waste of the leased premises, nor shall the Lessee carry on any noxious or offensive business therein, nor shall the Lessee carry on any business or activity therein which might reasonably be deemed to be a public or private nuisance. Lessee shall not bring or keep anything within the leased premises which will in any way affect fire or other insurance on the leased premises or any of its contents, or which will in any way conflict with any law, ordinance, rule, or regulation affecting the occupancy and use of said premises which have been or may hereafter be enacted or promulgated by any public authority.

20. HOLD HARMLESS:

- (a) Lessor shall not be liable for any damage done to the leased premises, or any of the fixtures, merchandise, property, or equipment therein contained, whether owned by Lessee or by any other person, due to the overflowing or breaking of steam, sewer, or water pipes, tanks, drains, boilers, basins, toilets, lavatories, or gutters or other plumbing, or from smoke, fire, odors, earthquake, explosion, gas, electricity, lighting, and wiring, or from any other use whatever, and whether having its origin in the leased premises or elsewhere.

- (b) This Lease is made upon the express condition that Lessor is to be free from any and all liability and claim for damages by reason of any damage or injury suffered by any persons, including Lessee, within the premises herein leased to Lessee or on the adjoining premises.

21. INSURANCE:

- (a) Lessee will, throughout the terms of this Lease, and at Lessee's own expense, either:
 - i. Procure and maintain a policy of comprehensive general liability insurance, such insurance to afford a minimum protection of not less than \$1,000,000.00 combined single limit coverage of bodily injury, property damage, loss of use, or combination thereof, or
 - ii. In the event that, as a Municipal Corporation, Lessee is self-insured and no tangible insurance policy exists, Lessee will remain liable for loss in the same manner were such policies procured.
 - iii. Lessee acknowledges and agrees for Lessor, its agents, and assigns to be listed as additional insureds on policies listed above.
- (b) Lessor is not required to maintain insurance against thefts within the leased premises.
- (c) If the Leased Premises or any other part of the building is damaged by fire or other casualty resulting from any act or negligence of Lessee or any of Lessee's agents, employees or invitees, Lease payments shall not be diminished or abated while such damages are under repair, and Lessee shall be responsible for the costs of repair not covered by insurance.

22. PARKING:

- (a) During the term of this Lease, Lessee shall have the non-exclusive use in common with Lessor, other tenants of the Premises, their guests and invitees, of the non-reserved common automobile parking areas, driveways, and footways, subject to rules and regulations for the use thereof as prescribed from time to time by Lessor.

23. ASSIGNMENT AND SUBLETTING:

- (a) Lessee hereby agrees not to assign this Lease, or any interest therein, nor let or underlet the whole or any part of said leased premises without the prior written consent of the Lessor, which consent shall be made within 30 calendar days of assignment or sublet notification from Lessee.
- (b) In making a determination as to whether to grant consent to any assignment or subletting of Lessee's interest, in whole or in part, under this Lease, Lessor shall be provided with all necessary information, including but not limited to the credit-worthiness of the proposed assignee or sub-lessee.
- (c) Any subletting or assignment without the prior written consent of Lessor shall be void and, at the option of the Lessor, terminate this Lease.
- (d) Consent to one subletting or assignment by Lessor, if given, shall not be deemed a consent to any subsequent subletting or assignment.

24. INSPECTION AND HOLDING OVER:

- (a) Upon 24-hour advance notice, the Lessor, its agents, or employees shall have the right at reasonable hours to enter the leased premises to inspect the same, provided such entrance does not thereby interfere with Lessee's operations on the Premises.
- (b) Should Lessee hold over said premises beyond either the Initial or Renewal Term, such tenancy shall be from month-to-month, but shall otherwise be subject to the terms and conditions of this Lease, so far as the same may be applicable.

25. SURRENDER OF PREMISES:

- (a) At the expiration of the term hereof, or at sooner termination of this Lease, the Lessee agrees to surrender possession of said premises, along with keys to all locks.
- (b) If any Lease payments due are unpaid, or if default is made in the performance of any of the covenants herein contained on the part of the Lessee, and if said default shall continue for 15 days after written notice thereof is given to Lessee by Lessor then it will be lawful for the Lessor to declare this Lease terminated.
- (c) Lessor may declare the term of this Lease ended and terminated by giving Lessee written notice of such intention, and if possession of the Leased Premises is not surrendered, Lessor may reenter said premises. Lessor shall have, in addition to the remedy above provided, any other right or remedy available to Lessor on account of any Lessee default, either in law or equity. Lessor shall use reasonable efforts to mitigate its damages.

26. EXPENSES AND FEES:

- (a) If suit is brought to enforce any covenant of this Lease for the breach of any covenant or condition herein, the parties hereto agree that the losing party shall pay to the prevailing party a reasonable attorney's fee, which shall be fixed by the court, and court costs.

27. EMINENT DOMAIN:

- (a) If the whole of any part of the leased premises is taken for public or quasi-public use by right of eminent domain, with or without litigation, or transferred by agreement in connection with such public or quasi-public use, this Lease, as to the part so taken or condemned or transferred, shall terminate as of the date title shall vest in the condemner.
- (b) In the event of such taking or condemnation by judgment, verdict, or agreement, Lessor shall have the option to terminate this Lease as of said date, Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of the Lessor, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to any compensation separately

awarded to Lessee for Lessee's relocation expenses and/or loss of Lessee's trade fixtures.

28. WAIVER NOT TO BE IMPLIED:

- (a) It is understood that no allowance or reduction in lease payment for any period of time will affect the amounts to accrue for the remainder of the Lease, and no waiver by Lessor of any breach of any term herein contained, shall be constructed as constituting a waiver of any subsequent breach, whether of the same term of the Lease or any other term.
- (b) The failure or omission of Lessor to terminate this Lease for any violation of any of its terms, conditions, or covenants shall in no way bar, stop, or prevent Lessor from terminating this Lease thereafter, either for such violation or for any subsequent violation of any such term, condition, or covenant.
- (c) The acceptance of rent hereunder shall not be or be construed to be a waiver of any breach of any term, covenants, or condition of this Lease. Lessor may accept partial payment of rent, whether or not after a notice to pay rent or quit the premises has been served, and apply it to the rent then owing without impairing Lessor's right and ability to claim and collect the balance of the rent then owing.

29. NOTICES AND PAYMENTS:

- (a) All notices required by law or required to be served hereunder must be effectively delivered to Lessee at: Director of Community Services, c/o Stockton-San Joaquin County Public Library, 605 N. El Dorado Street, Stockton, CA 95202.
- (b) The monthly lease payments will be paid to Lessor, at such place in San Joaquin County, California, as Lessor may from time to time designate in writing, which unless subsequent written notice is given, shall be to Lessor's agent, Peter Boysen Realty, Inc. at 19033 E. Highway 26 / P.O. Box 599, Linden, CA 95236.

30. APPEARANCE AND SANITATION:

- (a) In the delivery of merchandise, supplies, and materials to the leased premises, Lessee shall not interfere with the business of other Lessees in the building of which the leased premises form a part and such delivery shall be made at such hours and in accordance with such rules as Lessor may reasonably prescribe.
- (b) Lessee further agrees to reasonably control unsanitary conditions and rodents and vermin in and about the leased premises.

31. LIENS:

- (a) Lessee agrees to keep said premises free from all liens and claims of mechanics, laborers, material-men, and others for work performed and materials furnished, and Lessee shall not create or suffer to be created any lien or encumbrance on said Premises.

32. CONDITIONS:

- (a) Each and every covenant and term hereof to be kept and performed by the Parties is expressly made a condition upon breach thereof the injured Party may terminate this Lease and exercise all rights upon said Premises.

33. LEASE BINDING ON SUCCESSORS:

- (a) This Lease shall include and inure to and bind the heirs, executors, administrators, successors, and assigns of the respective parties hereto, but nothing in this paragraph contained shall be construed to modify or impair in any manner any of the provisions and restrictions of this Lease relating to the assignment of this Lease or any interest therein, or to the subletting or underletting of said leased premises or any part thereof.

34. COMPLETE AGREEMENT:

- (a) This instrument contains all of the provisions between the parties thereto, and no promise or agreement not contained herein shall be binding on the Lessor or Lessee. Any subsequent modification not in writing shall be of no force or effect.

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

LESSEE:

CITY OF STOCKTON
a Municipal Corporation

By: _____
KURT O. WILSON
City Manager

LESSOR:

MAGNASCO INVESTMENTS
a California General Partnership

By: _____

ATTEST:

By: _____
BONNIE PAIGE
City Clerk

APPROVED AS TO FORM:
JOHN LUEBBERKE, City Attorney

By: _____
Susana Alcala Wood, Assistant City Attorney