

**LEASE ACKNOWLEDGMENT AGREEMENT
AND AGREEMENT TO FORMALIZE LEASE**

B E T W E E N:

THE CORPORATION OF THE COUNTY OF ESSEX
(hereinafter referred to as the "Landlord")

OF THE FIRST PART

- and -

ESSEX COUNTY LIBRARY BOARD
(hereinafter referred to as "Tenant")

OF THE SECOND PART

WHEREAS the Tenant has leased space (the "**Premises**") for a number of years from the Landlord at the building located at municipal address 360 Fairview Avenue, Essex, Ontario (the "**Building**");

AND WHEREAS the Landlord and the Tenant have historically operated pursuant to an informal and unwritten lease agreement (the "**Lease**");

AND WHEREAS the Landlord and Tenant now wish to formalize the Lease by executing a written lease agreement, with the initial term to be governed by a written lease agreement to be for the period from January 1, 2020 to December 31, 2020 (the "**Initial Term**"), with the ability to extend the Initial Term for seven (7) consecutive terms of one (1) year each (each a "**Renewal Term**"). The Initial Term, together with all Renewal Terms, are hereinafter collectively referred to as the "**Term**";

AND WHEREAS the Landlord and the Tenant intend to enter into a Lease Agreement substantially in the form annexed hereto as Schedule "A" (the "**Lease**");

AND WHEREAS the Landlord and the Tenant wish to formalize the essential terms of the Lease immediately, and in anticipation of finalizing the specific language of the Lease;

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein and other valuable consideration, the receipt and sufficiency of which is expressly acknowledged and accepted, the Landlord and Tenant hereby agree that the essential terms of the Lease are as follows:

1. The Shared Occupancy Cost (as defined in the Lease) for and during the said Term shall be as follows:

| Period | Applicable Rent |
|--------------------------------------|------------------------|
| January 1, 2020 to December 31, 2020 | \$6,662.50 per month |
| January 1, 2021 to December 31, 2021 | \$6,829.06 per month |
| January 1, 2022 to December 31, 2022 | \$6,999.79 per month |
| January 1, 2023 to December 31, 2023 | \$7,174.78 per month |
| January 1, 2024 to December 31, 2024 | \$7,354.15 per month |
| January 1, 2025 to December 31, 2025 | \$7,501.24 per month |
| January 1, 2026 to December 31, 2026 | \$7,651.26 per month |
| January 1, 2027 to December 31, 2027 | \$7,804.29 per month |

2. Provided the Tenant has paid its Shared Occupancy Cost when due and otherwise observed and performed the covenants under the Lease to be observed and performed by it, following the expiration of the Initial Term, the Lease shall be extended automatically by seven (7) further successive terms of one (1) year each, being the Renewal Term(s) referred to above, with rent to be charged in accordance with the amounts outlined above.

3. The said Renewal Term(s) shall not automatically commence if a notice of termination has been given by one (1) party to the other at least ninety (90) days before the end of the Initial Term or the end of any Renewal Term.

4. If at the expiration of the final Renewal Term, the Tenant is permitted to hold-over with the consent of the Landlord, the tenancy of the Tenant thereafter shall, in the absence of a written agreement to the contrary, be on a month to month basis, subject to all other terms and conditions of the Lease, provided that:

- (a) the Landlord may by notice in writing terminate any such month to month tenancy on ninety (90) days prior written notice to the Tenant; and
- (b) for any period after the final Renewal Term, effective the first day of January of given calendar year in which there is a holding over, the effective annual Shared Occupancy Cost for such calendar year shall be negotiated between the parties.

5. This Lease Acknowledgment Agreement and Agreement to Formalize Lease may be executed in counterparts, each of which shall be deemed to be an original and both of which together shall constitute one and the same instrument. A party may send a copy of its original signature on the execution page hereof to the other by facsimile, PDF, or other electronic transmission. Such transmission shall constitute delivery of an executed copy of this Lease Amending Agreement.

6. This Lease Acknowledgment Agreement and Agreement to Formalize Lease shall be governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein.

7. This Lease Acknowledgment Agreement and Agreement to Formalize Lease shall be binding on the Parties and their respective heirs, successors and permitted assigns, if required.

IN WITNESS WHEREOF, the Parties have duly executed this Lease Acknowledgment Agreement and Agreement to Formalize Lease on the date indicated below.

Dated this [__] day of January [__], 2020.

THE CORPORATION OF THE COUNTY OF ESSEX

Per: Gary McNamara
Title: Warden

Per: Mary Birch
Title: Director of Council and Community
Services/ Clerk

We have the authority to bind the Corporation.

ESSEX COUNTY LIBRARY BOARD

Per: Robin Greenall
Title: CEO/Librarian

Per: Nelson Santos
Title: Library Board Chair

We have the authority to bind the Library Board.

SCHEDULE "A"

THIS LEASE made as of the 1st day of January 2020,

B E T W E E N:

THE CORPORATION OF THE COUNTY OF ESSEX
(hereinafter, the “**Landlord**”)

OF THE FIRST PART

- and -

ESSEX COUNTY LIBRARY BOARD
(hereinafter the “**Tenant**”)

OF THE SECOND PART

WITNESSETH AS FOLLOWS:

ARTICLE 1 – DEFINITIONS

1.01 Definitions

In this Lease, unless there is something in the subject matter or context inconsistent therewith, the following terms have the following respective meanings:

- (a) “**Applicable Laws**” means all statutes, laws, by-laws, regulations, ordinances, orders and requirements of governmental or other public authorities having jurisdiction over the Tenant;
- (b) “**Building**” means the Civic Centre Building located at 360 Fairview Avenue West, Essex, Ontario;
- (c) “**Building Systems**” means:
 - (i) the heating and ventilation systems and all other systems, services, installations and facilities from time to time installed in or servicing the Building (or any portion thereof) including, but not limited to, the following systems, services, installations and facilities: mechanical (including plumbing, drainage and sewage), electrical and other utilities, lighting, life safety (including fire prevention, communications, security and surveillance), and refuse removal; and

- (ii) all machinery, appliances, equipment, apparatus, components, computer software and appurtenances forming part of or used for or in connection with any of such systems, services, installations and facilities including, but not limited to, boilers, motors, generators, fans, pumps, pipes, conduits, ducts, valves, wiring, meters and controls, and the structures and shafts housing and enclosing any of them;
- (d) “**Commencement Date**” means January 1, 2020;
- (e) “**Event of Default**” has the meaning set out in Article 12.01;
- (f) “**Leasehold Improvements**” means all fixtures, improvements, installations, alterations and additions from time to time made, erected or installed by or on behalf of the Tenant in the Premises, including doors, hardware, partitions (including movable partitions), wall-to-wall floor coverings, ceiling tiles and painting;
- (g) “**Premises**” means the premises area of the Building shown in Schedule A hereto;
- (h) “**Shared Occupancy Cost**” means the amounts payable by the Tenant pursuant to Article 3.02, but which throughout this Lease may be referred to as "Shared Occupancy Cost", "rent", or "rents", and which terms may be used interchangeably despite the Tenant not being liable for rent but only its Shared Occupancy Cost;
- (i) “**Term**” means the period specified in Article 2.02 and, where the context requires, any renewal, extension, or overholding thereof;
- (j) “**Transfer**” means an assignment of this Lease in whole or in part, a sublease of all or any part of the Premises, any transaction whereby the rights of the Tenant under this Lease or to the Premises are transferred to another person, any transaction by which any right of use or occupancy of all or any part of the Premises is shared with or conferred on any person, any mortgage, charge or encumbrance of this Lease or any part thereof, or any transaction or occurrence whatsoever which has changed or will change the identity of the person having lawful use or occupancy of any part of the Premises; and
- (k) “**Transferee**” means any person or entity to whom a Transfer is or is to be made.

ARTICLE 2 - DEMISE AND TERM

2.01 Demise

In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord demises and leases to the Tenant and the Tenant rents from the Landlord the Premises.

2.02 Term

The Tenant shall have and hold the Premises in accordance with the terms and conditions herein set forth during the term commencing on January 1, 2020 (the "Commencement Date") and expiring on December 31, 2020 (the "**Initial Term**").

Provided that the Tenant has paid rent when due and otherwise observed and performed the covenants under the Lease to be observed and performed by it, following the expiration of the Initial Term, this Lease shall be extended automatically by seven (7) further successive terms of one (1) year (each, a "**Renewal Term**"), with regular annual increases in rent set in accordance with 3.03(c) below.

The said Renewal Term(s) shall not automatically commence if a notice of termination has been given by one (1) party to the other at least ninety (90) days before the end of the Initial Term or the end of any Renewal Term. The Initial Term, together with all Renewal Terms, are hereinafter collectively referred to as the "**Term**".

2.03 Holding Over

If at the expiration of the Term, the Tenant is permitted to hold-over with the consent of the Landlord, the tenancy of the Tenant thereafter shall, in the absence of a written agreement to the contrary, be on a month to month basis, subject to all other terms and conditions of this Lease; provided that:

- (a) the Landlord may by notice in writing terminate any such month to month tenancy on ninety (90) days prior written notice to the Tenant; and
- (b) for any period after December 31, 2027, effective the first day of January of a given calendar year in which there is a holding over, the effective annual rent for such calendar year shall be negotiated between the parties.

ARTICLE 3 – SHARED OCCUPANCY COST

3.01 Covenant to Pay, Gross Lease

The Tenant covenants to pay rent as provided in this Lease. The rent to be paid by the Tenant under this Article 3 shall be gross to the Landlord and inclusive of all costs and charges arising from or relating to the Premises, unless otherwise provided for herein and the Tenant covenants with the Landlord accordingly. Further to the foregoing, the parties hereto acknowledge that payments of rent by and pursuant to this Article 3 are not subject to HST at this time, that HST is not currently payable by the Tenant to the Landlord on account of current CRA policy with respect to HST and public libraries, and that HST may be applicable in the future upon changes in CRA policy. Should HST be applicable at a later date, the Tenant expressly agrees to pay same in addition to its Shared Occupancy Cost.

3.02 Shared Occupancy Cost

The Tenant shall, during the Term, pay to the Landlord the following amounts in respect of Shared Occupancy Cost and in the following manner:

- (a) from January 1, 2020 to December 31, 2024, effective the first day of January of a given calendar year during this Term, the annual Shared Occupancy for each calendar year shall be adjusted by 2.5% increase;
- (b) from January 1, 2025 to December 31, 2027, effective the first day of January of a given calendar year during this Term, the annual Shared Occupancy Cost for each calendar year shall be adjusted by 2.0% increase; and
- (c) for clarity, the monthly Shared Occupancy Cost for each year of the Term, based upon (a) and (b) above, is as follows:

| Period | Applicable Rent |
|--------------------------------------|----------------------|
| January 1, 2020 to December 31, 2020 | \$6,662.50 per month |
| January 1, 2021 to December 31, 2021 | \$6,829.06 per month |
| January 1, 2022 to December 31, 2022 | \$6,999.79 per month |
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| January 1, 2027 to December 31, 2027 | \$7,804.29 per month |

ARTICLE 4 - UTILITIES AND BUILDING SYSTEMS

4.01 Utilities and Other Services

The Landlord shall be responsible for providing heat, hydro, water, garbage removal, custodial services and supplies, snow removal and any other utility which is available in the Building generally.

4.02 No Overloading

The Tenant will not install any equipment which would exceed or overload the capacity of the utility facilities in the Premises or the Building or the electrical wiring and service in the Premises or the Building. The Tenant shall ensure that any equipment used by it in the Premises or the Building shall have and bear the appropriate standard and/or approval of the Canadian Standards Association.

4.03 No Liability

In no event shall the Landlord be liable for: any injury to any property of the Tenant; or, for any consequential damages, in either case arising from any interruption in or failure of the supply of any utility or service to the Premises or the Building which is beyond the reasonable control of the Landlord.

4.04 Building Systems

The Landlord shall, throughout the Term, operate, maintain, repair, replace and regulate the Building Systems in such a manner as to maintain reasonable conditions of temperature and humidity within the Premises and so as to maintain the Building Systems in a good and working order.

ARTICLE 5 - USE OF PREMISES

5.01 Use of Premises

The Landlord acknowledges and agrees that the Premises will be used primarily as office space for use by the Tenant's personnel and invitees. Notwithstanding the foregoing, the Tenant shall also be permitted to use the Premises for such additional purposes as are consistent with the Tenant's operations generally.

5.02 Conduct of Operations

- (a) The Tenant shall conduct its use of the Premises in a reasonable and proper manner, so as not to interfere with the Landlord's use of the remainder of the

Building, and otherwise in accordance with all Applicable Laws.

- (b) If the Tenant has, through its use or occupancy of the Premises, caused or permitted a release of a contaminant at, from or to the Premises, the Tenant shall immediately: notify the Landlord; and, subject to the direction of the Landlord, clean up such contaminant from the Premises, and any affected areas, at the Tenant's expense. On the termination of this Lease for any reason, the Tenant shall remove, at its expense, any contaminant or contamination which, through the Tenant's use or occupancy of the Premises, it has brought to or created at the Premises.
- (c) The Tenant, its employees, servants, volunteers, invitees and others under its control or for whom it is otherwise responsible for at law shall comply with all such reasonable rules which are established for the Building generally, including, without limitation, emergency procedures. Without limiting the foregoing, the Tenant acknowledges and agrees that:
 - (i) smoking and vaping is prohibited in the Premises and throughout the Building;
 - (ii) the Building may be equipped with video surveillance cameras; and
 - (iii) the Tenant will cooperate with all recycling procedures established by the Landlord.
- (d) The Tenant's employees, agents and independent contractors shall: not be considered employees of the Landlord; not represent themselves as an agent of the Landlord; nor be eligible for any of the benefits provided to employees of the Landlord. The Landlord reserves the right to demand the removal of any of the Tenant's employees or representatives from the Landlord's property if, in the Landlord's opinion, acting reasonably, such person's conduct has been unacceptable.

5.03 Access

The Tenant shall have unrestricted access to the Premises and all common areas (hallways, stairways, washrooms, etc.) and shall be provided with building passes for such purposes.

5.04 Waste, Nuisance, Overloading

The Tenant shall not do or suffer any waste or damage, disfiguration or injury to the Premises or other portion of the Building permitted to be used by them, nor permit or suffer

any overloading of the floors, roof deck, walls or any other part of the Premises or other portion of the Building permitted to be used by them. The Tenant shall not use or permit to be used any part of the Premises for any illegal or unlawful purpose or any dangerous, noxious or offensive trade or business, and shall not cause or permit any nuisance in, at or on the Premises or other portion of the Building permitted to be used by them.

ARTICLE 6 - PARKING

6.01 Parking

The Parties agree that there is significant unrestricted parking available for the Building. The Tenant and its personnel and invitees shall have reasonable access thereto when accessing and otherwise utilizing the Premises as contemplated herein.

ARTICLE 7 - MAINTENANCE, REPAIRS AND ALTERATIONS OF PREMISES

7.01 Tenant's Obligations

Except as otherwise specifically contemplated by this Lease, the Tenant shall have no responsibility for any routine maintenance, repairs or replacements to the Premises. The Tenant shall not be responsible for the cost of any maintenance, repairs or replacements, unless the same are as a result of the negligence or misconduct of the Tenant, its personnel, invitees or those for whom the Tenant is otherwise responsible at law. Regardless, the Tenant shall notify the Landlord if the Tenant becomes aware of there being need for any maintenance, repairs or replacements to the Premises. Despite the foregoing, it is understood that should the Tenant request any improvements to the Premises, such improvements will be at the discretion of the Landlord and at the cost of the Tenant and the Landlord's obligations under Article 7.02 below shall not apply in respect of same.

7.02 Landlord's Obligations

The Landlord shall be responsible for all routine maintenance, repairs and replacements to the Building and Premises (other than in respect of Leasehold Improvements).

7.03 Inspection and Repair on Notice

The Landlord, its servants, agents and contractors shall be entitled to enter on the Premises at any time, without notice, for the purpose of making emergency repairs, and during normal business hours on reasonable prior written notice, for the purpose of inspecting and making repairs, alterations or improvements to the Premises, or for the purpose of having access to the under floor ducts, or to the access panels to mechanical

shafts (which the Tenant agrees not to obstruct). The Tenant shall not be entitled to compensation for any inconvenience, nuisance or discomfort occasioned thereby. The Landlord, its servants, agents and contractors may, at any time and from time to time, on reasonable prior written notice, enter on the Premises to remove any article or remedy any condition which, in the reasonable opinion of the Landlord, would likely lead to the cancellation of any policy of insurance. The Landlord will take reasonable precautions and attempt to schedule such work so as not to unreasonably interfere with the operation of the Tenant's utilization of the Premises and to minimize interference with the Tenant's use and enjoyment of the Premises.

7.04 Damage Caused by Tenant

The Tenant shall not permit or suffer to be permitted any damage to the Premises. The Tenant shall report to the Landlord, in writing, any damage or injury to the Premises regardless as to how it was caused; and, the Building caused by the Tenant, its personnel, invitees or others for whom it is responsible for at law. The repair of any such damage or injury to the Premises or the Building shall be completed (to the extent the Landlord elects to) by the Landlord, at the cost of the Tenant, and the Tenant confirms its responsibility to promptly pay for the reasonable out of pocket costs associated with the repair of any such damage.

7.05 Alterations, Improvements, Repairs and Installations

The Tenant shall not make any alterations, improvements, repairs or installations in or to the Premises without the Landlord's prior written consent (which shall not be unreasonably withheld). Regardless, if consent is so provided, any such alterations, repairs or installations made shall be: (a) at the Tenant's expense; and (b) in compliance with all applicable building codes.

7.06 Signs

The Tenant shall be permitted to install (at its costs), one (1) non-illuminated sign (to be supplied and paid for by the Tenant), on or beside the door to the Premises. The outdoor sign for the Property shall continue to display the Tenant's name (in the manner it appears on the date hereof) for the Term; provided, however, that it shall be the Tenant's obligation to maintain the insert which forms the part of such sign which has the Tenant's name on it.

7.07 Removal of Improvements and Fixtures

- (a) All Leasehold Improvements shall immediately on their placement become the Landlord's property, without compensation to the Tenant. Except as otherwise agreed by the Landlord in writing, no Leasehold Improvements or trade fixtures

shall be removed from the Premises by the Tenant, either during or on the expiry or earlier termination of the Term, except that:

- (i) the Tenant may, during the currency of this Lease, in its normal course, remove its non-affixed chattels, which includes furniture, equipment and supplies; provided, however, that on the expiry of this Lease, the Tenant shall remove all of its non-affixed chattels from the Premises; and
 - (ii) the Tenant shall, at the expiry of this Lease and at its sole cost, remove such of the Leasehold Improvements as the Landlord shall require to be removed.
- (b) The Landlord will, at the expense of the Tenant, repair any damage caused to the Premises by the removal of any Leasehold Improvements or its non-affixed chattels. In the event that the Tenant fails to remove its Leasehold Improvements or non-affixed chattels prior to the expiry of this Lease, such Leasehold Improvements or non-affixed chattels shall, at the option of the Landlord, become the property of the Landlord and may be removed from the Premises and sold or disposed of by the Landlord in such manner as it deems advisable. For greater certainty, the Tenant shall have no right to remove any Building Systems or light fixtures.

7.08 Surrender of Premises

At the expiration of this Lease for any reason, the Tenant shall peaceably surrender and give up to the Landlord vacant possession of the Premises.

ARTICLE 8 - INSURANCE AND INDEMNITY

8.01 Tenant's Insurance

- (a) The Tenant shall, at its sole cost and expense, take out and maintain in full force and effect, at all times throughout the Term, the following insurance:
 - (i) "All Risks" insurance on property of every description and kind owned by the Tenant, or for which the Tenant is legally liable, or which is installed by or on behalf of the Tenant, within the Premises including, without limitation, stock-in-trade, furniture, equipment, partitions, trade fixtures and Leasehold Improvements, in an amount not less than the full replacement cost thereof from time to time; and

- (ii) general liability and property damage insurance, including personal liability, contractual liability, tenants' legal liability, non-owned automobile liability, and owners' and contractors' protective insurance coverage with respect to the Premises, which coverage shall include the operations conducted by the Tenant in the Premises. Such policies shall be written on a comprehensive basis with coverage for any one occurrence or claim of not less than Five Million Dollars (\$5,000,000.00). Such insurance shall provide coverage for all acts and omissions of the Tenant's personnel, invitees and others for whom it is responsible at law and shall not have any exclusions in respect thereof.
- (b) The insurance described in Articles 8.01(a)(i) and (ii) shall name the Landlord as an additional insured and shall provide that any proceeds recoverable in respect of damage to Leasehold Improvements shall be payable to the Landlord. All public liability insurance shall contain a provision for cross-liability or severability of interest as between the Landlord and the Tenant.
- (c) The Tenant shall obtain from the insurer(s) under such policies undertakings to notify the Landlord in writing at least thirty (30) days prior to any cancellation thereof. The Tenant shall furnish to the Landlord certificates of all such policies.

8.02 Landlord's Insurance

The Landlord shall provide and maintain insurance on the Building against loss, damage or destruction caused by fire and extended perils under a standard extended form of fire insurance policy in such amounts and on such terms and conditions as would be carried by a prudent owner of a similar building, having regard to the size, age and location of the Building. The amount of insurance to be obtained shall be determined at the sole discretion of the Landlord. The Landlord may maintain such other insurance in respect of the Building and its operation and management as the Landlord determines, acting reasonably. The Tenant shall not be an insured under the policies with respect to the Landlord's insurance, nor shall the Tenant be deemed to have any insurable interest in the property covered by such policies, or any other right or interest in such policies or their proceeds.

8.03 Compliance

The Tenant and the Landlord shall comply promptly with all requirements and recommendations of the providers of any insurance contemplated hereby.

8.04 Tenant Indemnity

The Tenant shall indemnify the Landlord and save it harmless from any and all losses or

claims, actions, demands, liabilities and reasonable expenses in connection with loss of life, personal injury and/or damage to or loss of property: (a) occasioned or caused by any act or omission of the Tenant or anyone for whom it is in law responsible; or (b) arising from any breach by the Tenant of any provision of this Lease.

8.05 Indemnity By Landlord

The Landlord shall indemnify and hold the Tenant harmless from and against all liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned or caused: (a) by any act or omission of the Landlord or those for whom it is responsible for at law; or (b) arising out of any cause whatsoever through the carrying out of its obligations under this Lease.

8.06 Limitation of Liability

Notwithstanding the foregoing or anything else herein contained, in no event, whether or not the result of the willful act or the negligence of either party, its agents, officers, employees or others for whom it is legally responsible, and irrespective of any insurance that may or may not be carried or required to be carried, shall a party hereto be liable for any indirect or consequential damages suffered by the other party.

ARTICLE 9 - ASSIGNMENT AND SUBLETTING

9.01 Assignment, Subletting

The Tenant shall not affect any Transfer without the prior written consent of the Landlord (which consent may be withheld in the Landlord's sole and absolute discretion).

ARTICLE 10 - QUIET ENJOYMENT

10.01 Quiet Enjoyment

The Tenant, on performing and observing the covenants and provisions herein required to be performed and observed on its part, shall be entitled to peaceably enjoy the Premises on the terms otherwise set forth herein.

ARTICLE 11 - DAMAGE AND DESTRUCTION

11.01 Damage or Destruction to the Building

If a substantial portion of the Building is damaged or destroyed by fire or by other casualty the Landlord may elect, within thirty (30) days of such damage or destruction and on written notice to the Tenant, not to remediate same and to terminate this Lease. For greater certainty, the Landlord shall have no obligation to rebuild any part of the Building in such circumstances.

ARTICLE 12 - DEFAULT

12.01 Default and Right to Re-enter

Any of the following constitutes an Event of Default under this Lease:

- (a) any rent due (including but not limited to the Tenant's Shared Occupancy Cost) is not paid within thirty (30) days after notice in writing from the Landlord to the Tenant;
- (b) the Tenant has breached any of its material obligations in this Lease and, if such breach is capable of being remedied and is not otherwise listed in this Article 12.01, after notice in writing from the Landlord to the Tenant:
 - (i) the Tenant fails to remedy such breach within ten (10) days (or such shorter period as may be provided in this Lease); or
 - (ii) if such breach cannot reasonably be remedied within ten (10) days (or such shorter period), the Tenant fails to commence to remedy such breach within ten (10) days of such breach, or thereafter fails to proceed diligently to remedy such breach;
- (c) the Tenant becomes bankrupt or takes the benefit of any statute for bankrupt or insolvent debtors or makes any proposal, an assignment or arrangement with its creditors, or any steps are taken or proceedings commenced by any person for the dissolution, winding-up or other termination of the Tenant's existence or the liquidation of its assets;
- (d) a trustee, receiver, receiver/manager or a person acting in a similar capacity is appointed with respect to the business or assets of the Tenant and such appointment is not discharged within a reasonable period of time; and

- (e) the Tenant abandons the Premises by permanently removing its Leasehold Improvements, chattels and equipment from the Premises and ceases to make use of the Premises, it being understood that the Premises will be little utilized during the summer and holidays.

12.02 Default and Remedies

If and whenever an Event of Default occurs, then, without prejudice to any other rights which it has pursuant to this Lease or at law, the Landlord shall have the following rights and remedies, which are cumulative and not alternative:

- (a) to terminate this Lease by notice to the Tenant or to re-enter the Premises and repossess them and, in either case, enjoy them as of its former estate, and to remove all persons and property from the Premises and store such property at the expense and risk of the Tenant or sell or dispose of such property in such manner as the Landlord sees fit without notice to the Tenant. If the Landlord enters the Premises without notice to the Tenant as to whether it is terminating this Lease under this Article 12.02(a) or proceeding under Article 12.02(b) or any other provision of this Lease, the Landlord shall be deemed to be proceeding under Article 12.02(b), and the Lease shall not be terminated, nor shall there be any surrender by operation of law, but the Lease shall remain in full force and effect until the Landlord notifies the Tenant that it has elected to terminate this Lease. No entry by the Landlord during the Term shall have the effect of terminating this Lease without notice to that effect to the Tenant;
- (b) to enter the Premises as agent of the Tenant to do any or all of the following:
 - (i) re-let the Premises for whatever length and on such terms as the Landlord, in its discretion, may determine, and to receive the rent therefor;
 - (ii) take possession of any property of the Tenant on the Premises, store such property at the expense and risk of the Tenant, or sell or otherwise dispose of such property in such manner as the Landlord sees fit without notice to the Tenant;
 - (iii) make alterations to the Premises to facilitate their re-letting; and
 - (iv) apply the proceeds of any such sale or re-letting first, to the payment of any expenses incurred by the Landlord with respect to any such re-letting or sale, second, to the payment of any indebtedness of the Tenant to the Landlord other than Rent, and third, to the payment of Rent in arrears, with the residue to be held by the Landlord and applied to payment of future Rent as it

becomes due and payable, provided that the Tenant shall remain liable for any deficiency to the Landlord;

- (c) to remedy or attempt to remedy any default of the Tenant under this Lease for the account of the Tenant and to enter on the Premises for such purposes. No notice of the Landlord's intention to remedy or attempt to remedy such default need be given to the Tenant unless expressly required by this Lease, and the Landlord shall not be liable to the Tenant for any loss, injury or damages caused by acts of the Landlord in remedying or attempting to remedy such default. The Tenant shall pay to the Landlord all expenses incurred by the Landlord in connection therewith;
- (d) to recover from the Tenant all damages, costs and expenses incurred by the Landlord as a result of any default by the Tenant including, if the Landlord terminates this Lease, any deficiency between those amounts which would have been payable by the Tenant for the portion of the Term following such termination and the net amounts actually received by the Landlord during such period of time with respect to the Premises; and
- (e) to recover from the Tenant the full amount of the current month's rent together with the equivalent of three (3) months' rent, all of which shall immediately become due and payable as accelerated rent.

12.03 Distress

Notwithstanding any provision of this Lease or any provision of any applicable legislation, none of the goods and chattels of the Tenant on the Premises at any time during the Term shall be exempt from levy by distress for Rent in arrears, and the Tenant waives any such exemption. If the Landlord makes any claim against the goods and chattels of the Tenant by way of distress, this provision may be pleaded as an estoppel against the Tenant in any action brought to test the right of the Landlord to levy such distress.

12.04 Costs

The Tenant shall pay to the Landlord all damages, costs and expenses (including, without limitation, all legal fees on a solicitor and client basis) incurred by the Landlord in enforcing the terms of this Lease.

12.05 Remedies Cumulative

Notwithstanding any other provision of this Lease, the Landlord may from time to time resort to any or all of the rights and remedies available to it in the event of any default hereunder by the Tenant, either by any provision of this Lease, by statute, or common law,

all of which rights and remedies are intended to be cumulative and not alternative. The express provisions contained in this Lease as to certain rights and remedies are not to be interpreted as excluding any other or additional rights and remedies available to the Landlord by statute or common law.

ARTICLE 13 - GENERAL

13.01 Force Majeure

Notwithstanding any other provision contained herein, in the event that either the Landlord or the Tenant should be delayed, hindered or prevented from the performance of any act required hereunder by reason of any unavoidable delay, including strikes, lockouts, unavailability of materials, inclement weather, acts of God or any other cause beyond its reasonable care and control, but not including insolvency or lack of funds, then performance of such act shall be postponed for a period of time equivalent to the time lost by reason of such delay. The provisions of this Article 13.01 shall not under any circumstances operate to excuse the Tenant from prompt payment of Rent and/or any other charges payable under this Lease.

13.02 Strikes and Lock-out

Notwithstanding any other provision of this Agreement, in the event of any strike, lock-out or other labour disturbance affecting the Landlord, the Landlord shall have the right to close the Building and the Premises and to prohibit entrance thereto by anyone, including the Tenant. In such event, the Tenant's obligation to pay the Rent shall be suspended during that time that the Premises are not available to the Tenant (and the parties agree to make appropriate adjustments, on a proportional basis, to the Rent otherwise payable for such time as the Premises are not available to the Tenant) but the Landlord shall not otherwise have any obligation or liability to the Tenant in respect of any such closure. In the event of a strike, lock-out or other labour disturbance affecting the Landlord which does not result in the Landlord deciding to restrict access to or close the Premises or any portion of the Building which the Tenant is entitled to utilize in accordance with the Terms hereof, the Tenant may continue to use and occupy the Premises and the related areas in accordance with the Terms and conditions of this Lease.

13.03 Environmental Matters

The Tenant shall indemnify the Landlord, its successors and assigns from and against any and all losses, claims, costs, expenses, damages or liabilities (including without limitation all legal fees and disbursements on a solicitor and his client basis) which at any time may be paid or incurred by any of them for, or directly or indirectly arising out of, resulting from or attributable to: the use, generation, storage, escape, seepage, leakage, spillage,

release, disposal or presence on or from the Premises of any hazardous substance during the period of occupancy by the Tenant; or, the use, generation, storage, spill, release or disposal of any hazardous substance by the Tenant. For the purposes of this section, hazardous substance means any substance declared from time to time to be hazardous, dangerous, toxic or similarly described under any applicable federal, provincial or municipal law, by-law, regulation or other enactment. The Tenant shall forthwith notify the Landlord upon receipt of any order, directive, notice or other communication whatsoever from any governmental or other authority relating to the Premises and/or any environmental laws.

13.04 Effect of Waiver or Forbearance

No waiver by any party of any breach by any other party of any of its covenants, agreements or obligations contained in this Lease shall be or be deemed to be a waiver of any subsequent breach thereof or the breach of any other covenants, agreements or obligations, nor shall any forbearance by any party to seek a remedy for any breach by any other party be a waiver by the party so forbearing of its rights and remedies with respect to such breach or any subsequent breach. The subsequent acceptance of Rent by the Landlord shall not be deemed a waiver of any preceding breach by the Tenant of any term, covenant or condition regardless of the Landlord's knowledge of such preceding breach at the time of the acceptance of such Rent. All Rent and other charges payable by the Tenant to the Landlord hereunder shall be paid without any deduction, set-off or abatement whatsoever, and the Tenant waives the benefit of any statutory or other right in respect of abatement or set-off in its favour at the time hereof or at any future time.

13.05 Notices

Any payment, written notice or delivery of documents provided for or permitted in this Agreement shall be sent by personal delivery, delivery service or regular prepaid mail, as follows:

(a) If to the Landlord:

The Corporation of the County of Essex
360 Fairview Avenue West
Essex, ON N8M 1Y6
Attention: Scott Holland,
Manager of Technical & Building Services

(b) If to the Tenant:

Essex County Library Board
360 Fairview Avenue West, Suite 101
Essex ON N8M 1Y6
Attention:

A party may change its notice particulars for purposes of this Article 13.05, from time to time, by notice in writing. For purposes of this Article 13.05:

- (a) “**Business Day**” meaning Monday through Friday, inclusive, so long as any such day is not a statutory holiday in the Province of Ontario; and
- (b) “**Normal Business Hours**” means 9:00 AM (Eastern Standard Time) to 4:30 PM (Eastern Standard Time) on a Business Day.

Items sent utilizing a delivery service shall be deemed to have been received on the date such delivery service delivers same, so long as such delivery is made during Normal Business Hours, failing which such items shall be deemed to be received on the next Business Day. Items provided by personal delivery shall be deemed to have been received when delivered. Items provided by prepaid regular mail shall be deemed to have been delivered on the fifth (5th) Business Day following the postmark thereon.

Notwithstanding the foregoing, if any written notice, delivery or payment is to be given or made hereunder during any disruption in the service of Canada Post, the party sending same shall do so by personal delivery or delivery service.

13.06 Registration

The Tenant shall not register this Lease, but may register a Notice of Lease. Such Notice of Lease shall describe the parties, the Premises, the term of this Lease and shall be prepared by the Tenant’s solicitors, at the Tenant’s expense, and shall be registered at the Tenant’s expense. Upon the expiration or earlier termination of this Lease the Tenant shall, at its expense, forthwith remove and discharge all notices, registered by it on the title to the property on which the Building is located. This obligation shall survive the expiration or sooner termination hereof.

13.07 Number, Gender, Effect of Headings

Words importing the singular number only shall include the plural and *vice versa*, words importing the masculine gender shall include the feminine and neuter genders, and words importing persons shall include firms and corporations and *vice versa*. The division of this

Lease into Articles and Sections and the insertion of headings are for convenience of reference only, and shall not affect the construction or interpretation of this Lease.

13.08 Severability, Subdivision Control

If any Article or Section or part or parts of an Article or Section in this Lease is or is held to be illegal or unenforceable, it or they shall be considered separate and severable from the Lease and the remaining provisions of this Lease shall remain in full force and effect and shall be binding on the Landlord and the Tenant as though such Article or Section or part or parts thereof had never been included in this Lease. It is an express condition of this Lease that the subdivision control provisions of the applicable provincial legislation be complied with, if necessary. If such compliance is necessary, the Tenant covenants and agrees to diligently proceed, at its own expense, to obtain the required consent, and the Landlord agrees to cooperate with the Tenant in bringing such application.

13.09 Entire Agreement

There are no covenants, representations, warranties, agreements or other conditions expressed or implied, collateral or otherwise, forming part of or in any way affecting or relating to this Lease, save as expressly set out or incorporated by reference herein, and this Lease constitutes the entire agreement duly executed by the parties, and no amendment, variation or change to this Lease shall be binding unless the same shall be in writing and signed by the parties.

13.10 Counterparts

This Lease may be executed in counterparts, each of which so executed shall be deemed to be an original, and with such counterparts together constituting one and the same instrument. A facsimile or electronic portable document format (.pdf) signature of any party shall be sufficient to constitute the original execution of this Agreement by such party for all purposes.

13.11 Choice of Law

This Lease shall be governed by and construed in accordance with the laws of the Province of Ontario.

13.12 Successors and Assigns

The rights and liabilities of the parties shall enure to the benefit of their respective successors and assigns, subject to the requirement for consent by the Landlord hereunder.

IN WITNESS WHEREOF the parties have duly executed this Lease contained on this and the preceding 18 pages.

**THE CORPORATION OF
THE COUNTY OF ESSEX**

ESSEX COUNTY LIBRARY BOARD

Per: Gary McNamara
Title: Warden

Per: Robin Greenall
Title: CEO/Chief Librarian

Per: Mary Birch
Title: Director of Council and
Community Services/Clerk

Per: Nelson Santos
Title: Library Board Chair

We have authority to bind the Landlord.

We have the authority to bind the Tenant