

## REAL ESTATE LEASE

This Lease Agreement (this "Lease") is made effective as of January 1, 2017, by and between **Ben-Den LLC**, ("Landlord"), and **Pueblo City-County Library District**, ("Tenant"). The parties agree as follows:

**PREMISES.** Landlord, in consideration of the lease payments provided in this Lease, leases to Tenant 622 South Union Avenue, Pueblo, Colorado 81004 (the "Premises") comprising the upper floor (approximately 7200 square feet external area) of the building located at 618-622 South Union Avenue, Pueblo, Colorado 81004.

**PARKING.** Tenant shall be entitled to exclusive use of all parking spaces located on South and East sides of premises.

**TERM.** The lease term will begin on January 1, 2017 and will terminate on December 31, 2021.

**RENEWAL TERMS.** The Tenant may extend the term of this Lease for one additional period of five years. The Tenant shall notify the Landlord in writing of its intent to extend the term of this Lease on or before July 1, 2021.

For this extension period, the amount of the Tenant's monthly lease payments will be increased by 3% each year above the monthly payments beginning on January 1, 2022.

Upon receipt of proper notification from the Tenant of its intent to extend the term of this Lease, the Landlord shall notify the Tenant in writing that the term of the Lease has been extended as requested. On or before July 31, 2021, the Landlord shall notify the Tenant in writing what the exact amount of the monthly lease payment shall be. After the term of this lease has been extended, the Tenant shall be obligated to pay the Landlord the revised monthly lease payment amount in advance beginning on January 1, 2022.

**LEASE PAYMENTS.** Tenant shall pay to Landlord monthly payments of \$2,762.00 per month for the five year term, payable in advance on the first day of each month, for annual lease payments of \$33,144.00 and \$165,720.00 total lease payments. Tenant is a public entity and pursuant to Colorado Revised Statutes 39-3-124 (1)(b)(I), part of the \$33,144.00 in annual rent will be paid in the form of a reduction on the real estate taxes for that portion of the building occupied by tenant. The mechanics of that calculation and payment are set forth in the paragraph below titled "TAXES".



Lease payments shall be made to the Landlord at 620 South Union Avenue, Pueblo, Colorado 81004, as may be changed from time to time by Landlord.

**LATE PAYMENTS.** Tenant shall pay a late fee equal to 5.00% of the required installment payment for each payment that is not paid within ten (10) days after the due date for such late payment.

**NON-SUFFICIENT FUNDS.** Tenant shall be charged \$25.00 for each check that is returned to Landlord for lack of sufficient funds.

**SECURITY DEPOSIT.** At the time of the signing of the Lease, Tenant shall pay to Landlord in trust, a security deposit of \$2,000.00 to be held and disbursed for Tenant damages to the Premises (if any) as provided by law, the receipt of which is hereby acknowledged.

**POSSESSION.** Tenant shall be entitled to possession on the first day of the term of this Lease, and shall yield possession to Landlord on the last day of the term of this Lease, unless otherwise agreed by both parties in writing.

**USE OF PREMISES.** Tenant may use the Premises only for retail sales, offices and storage. The premises may be used for any other purpose only with the prior written consent of Landlord, which shall not be unreasonably withheld. Tenant shall notify Landlord of any extended absence from the Premises not later than the first day of the extended absence.

Tenant shall not allow any use of Premises which disturb other tenants or persons using nearby properties.

Tenant shall not allow any pets on the Premises.

Tenant shall not use the Premises for any purposes prohibited by the laws of the United States of America, State of Colorado, and/or City and/or County of Pueblo.


**REMODELING OR STRUCTURAL IMPROVEMENTS.** With the exception of heating and air conditioning improvements, the Tenant shall have the obligation to conduct any construction or remodeling (at Tenant's expense) that may be required to use the Premises as specified above.

Tenant may also construct such fixtures on the Premises (at Tenant's expense) that appropriately facilitate its use for such purposes. Such construction shall be undertaken and such fixtures may be erected only with the prior written consent of the Landlord which shall not be unreasonably withheld. At the end of the lease term, Tenant shall be entitled to remove (or at the request of Landlord shall remove) such fixtures, and shall restore the Premises to substantially the same condition of the Premises at the commencement of this Lease.

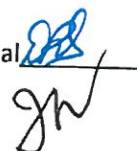
If additional heating and air conditioning improvements are needed by the Tenant in order to use the Premises as specified above, the Tenant shall be responsible for all costs. They shall also be undertaken only with the prior written consent of the Landlord which shall not be unreasonably withheld. All such remodeling and/or structural improvements shall be done in compliance with all applicable building codes. Tenant shall furnish to Landlord written release of liens from all persons and or companies furnishing materials and/or labor for such remodeling and/or structural improvements. All structural improvements shall become the property of the Landlord, and shall not be considered as fixtures subject to removal by Tenant. However, at the termination of the Lease or at any time prior to termination, Tenant shall have the option to remove at the Tenant's sole discretion and expense the following specified items:

- 1) Carpet that is installed at Tenant's expense in the warehouse/storage areas located on the Premises. All carpet installed at Tenant's expense in the existing front office space on the Premises, however, shall not be subject to removal by the Tenant.
- 2) Interior partition walls and components installed at Tenant's expense. All furred out exterior walls installed at Tenant's expense, however, shall not be subject to removal by the Tenant.
- 3) Suspended ceiling and lighting fixtures installed at Tenant's expense.

**MAINTENANCE.**

Tenant's obligation for maintenance shall include:

- The sewer, water pipes, and other matters related to plumbing.
- The electrical wiring.
- The heating system.



- Insurance against glass breakage.
- Damage to any property, improvements, or remodeling furnished by Tenant.
- Interior painting.
- Snow and ice removal from sidewalks abutting the book store and from the parking lots around the building
- All other items of maintenance not specifically delegated to Landlord under this Lease.
- Tenant's obligation for cost of maintenance shall be reduced by any amounts covered and paid by Landlord's insurance on the building.

Landlord's obligation for maintenance shall include:

- The roof, outside walls, and other structural parts of the building.
- Air conditioning repairs and maintenance.

**ACCESS BY LANDLORD TO PREMISES.** Subject to Tenant's consent (which shall not be unreasonably withheld), Landlord shall have the right to enter the Premises to make inspections, provide necessary services, or show the unit to prospective buyers, mortgagees, tenants or workers. As provided by law, in the case of an emergency, Landlord may enter the Premises without Tenant's consent.

**UTILITIES AND SERVICES.** Tenant shall be responsible for the following utilities and services in connection with the Premises:

- Electricity.
- Gas.
- Heating.
- Garbage and trash disposal.
- Janitorial Services.
- Telecommunications service.

Tenant acknowledges that Landlord has full explained to Tenant the utility rates, charges and service for which Tenant will be required to pay (if any), other than those to be paid directly to the utility company furnishing the service.

Landlord shall be responsible for the following utilities and services in connection with the Premises:

- Water and sewer.
- Fire and storm insurance for damage to the building, except to property, improvements, or remodeling furnished by tenant.
- Maintain structural soundness of exterior walls of the building.
- Keep exterior of building, including roof, in good repair.



PROPERTY INSURANCE. Landlord and Tenant shall each be responsible to maintain appropriate insurance for their respective interests in the Premises and property located on the Premises.

LIABILITY INSURANCE. Tenant shall maintain liability insurance in a total aggregate sum of at least \$1,000,000.00. Tenant shall deliver appropriate evidence to Landlord as proof that adequate insurance is in force. Landlord shall have the right to require that the Landlord receive notice of any termination of such insurance policies.

INDEMNITY REGARDING USE OF PREMISES. Tenant agrees to indemnify, hold harmless, and defend Landlord from and against any and all losses, claims, liability, and expenses, including reasonable attorney fees, if any, which Landlord may suffer or incur in connection with Tenant's use or misuse of the Premises.

DANGEROUS MATERIALS. Tenant shall not keep or have on the Premises any article or thing of a dangerous, inflammable, or explosive character that might substantially increase the danger of fire on the Premises, or that might be considered hazardous by a responsible insurance company, unless the prior written consent of Landlord is obtained and proof of adequate insurance protection is provided by Tenant to Landlord.

TAXES. Taxes attributable to the Premises or the use of the Premises shall be allocated as follows:

Real Estate Taxes. Landlord shall pay all real estate taxes and assessments for the Premises. Pursuant to Colorado Revised Statutes 39-3-124 (1)(b)(I), under which a political subdivision of the state is exempted from real property tax for that part of the real property that is used by the Tenant, the amount of those annual taxes will be used to reduce the amount of the lease in an amount equal to the exempt taxes each year. In October of every year, after the receipt of the property tax statement, Landlord will calculate the savings based on property tax due on the taxable portion of the building, approximately one-half of the total square footage, and credit the follow year's lease rate for the Tenant accordingly.

Personal Taxes: Tenant shall pay all personal taxes and any other charges which may be levied against the Premises and which are attributable to Tenant's use of the Premises.

DESTRUCTION OR CONDEMNATION OF PREMISES. If the Premises are partially destroyed in a manner that prevents the conduction of Tenant's use of the Premises in a normal manner, and if the damage is reasonably repairable within sixty days after the occurrence of the destruction, and if the cost of repair is less than \$100,000.00, Landlord shall repair the Premises and lease payments shall abate during the period of the repair. However, if the damage is not repairable within sixty days, or if the cost of repair is \$100,000.00 or more, or if Landlord is prevented from repairing the damage by forces beyond Landlord's control, or if the property is condemned, this Lease shall terminate upon twenty days' written notice of such event or condition by either party.



**MECHANICS' LIENS:** Neither the Tenant nor anyone claiming through the Tenant shall have the right to file mechanics' liens or any other kind of lien on the Premises and the recording of the Memorandum of Lease constitutes notice that such liens are invalid. Further, Tenant agrees to: (1) give actual advance notice to any contractors, subcontractors or suppliers of goods, labor, or services that such liens will not be valid; and (2) take whatever additional steps that are necessary in order to keep the premises free of all liens resulting from construction done by or for the Tenant.

**DEFAULTS.** Tenant shall be in default of this Lease, if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within ten (10) days or any other obligation within ten (10) days after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice, and without prejudicing Landlord's rights to damages.

In the alternative, Landlord may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this Lease. Tenant shall pay all costs, damages, and expenses suffered by Landlord by reason of Tenant's defaults. All sums of money or charges required to be paid by Tenant under this lease shall be additional rent, whether or not such sums or charges are designated as "additional rent."

**ASSIGNABILITY/SUBLETTING.** The Landlord consents to the sublease of approximately 5,000 square feet of the premises by the Tenant to the Friends of the Pueblo City-County Library District for the purpose of operating a used book store open to the public. Tenant may not otherwise assign or sublease any interest in the Premises, nor effect a change in the majority ownership of the Tenant (from the ownership existing at the inception of this lease), without prior written consent of Landlord, which shall not be unreasonably withheld.

**NON-APPROPRIATION.** Tenant presently intends to fulfill all payment terms of the lease, however, as a public entity, Tenant is dependent upon annual appropriation by the Board of Trustees of the Pueblo City-County Library District for funding of operating costs each year. Tenant shall have the right to cancel this agreement at the end of any calendar year during the term hereof that governmental funding is not granted for the subsequent calendar year. Upon such cancellation Tenant shall be released from all further liability under this Lease. The right granted to Tenant by this provision may only be exercised for the expressed reason and for no other reason.


NOTICE. Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

LANDLORD:

Name: Ben-Den LLC  
Address: 622 South Union Avenue  
Pueblo, Colorado 81004

TENANT:

Name: Pueblo City-County Library District  
Address: 100 East Abriendo Avenue  
Pueblo, Colorado 81004

Such addresses may be changed from time to time by either party by providing notice as set forth above.

ENTIRE AGREEMENT / AMENDMENT. This Lease Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

SEVERABILITY. If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

WAIVER. The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

CUMULATIVE RIGHTS. The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

GOVERNING LAW. This Lease shall be construed in accordance with the laws of the State of Colorado.

Signed this 26 day of August, 2016.

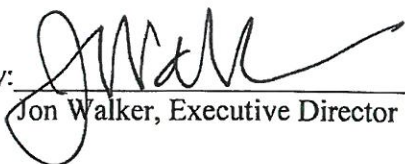
LANDLORD:

TENANT:

Ben-Den LLC

Pueblo City-County Library District

By:   
Dennis R. Smith

By:   
Jon Walker, Executive Director