

## AMENDED OPERATING AGREEMENT

This Amended Operating Agreement (this "Agreement") made as of October \_\_\_\_, 2019 by and between the Town of Longmeadow, a Massachusetts municipal corporation with a usual place of business at 20 Williams Street, Longmeadow, Massachusetts (the "Town") and The Richard Salter Storrs Library Inc. of Longmeadow, a Massachusetts non-profit corporation with a place of business at 693 Longmeadow Street, Longmeadow, Massachusetts ("Storrs Library").

### PREAMBLE

A. The last will of Sarah W. Storrs, dated July 31, 1905, provided for the creation of a corporation for maintaining a free public library in the Town. The Will stated: "Desiring to perpetuate the memory of a name dear to my family for three generations I wish to found the Richard Salter Storrs Library of Longmeadow." Conditioned first on the formation of a corporation by that name to maintain a free public library and second on the donation of an additional five thousand dollars by her fellow Longmeadow citizens, Miss Storrs bequeathed to Storrs Library "all my real estate in said Longmeadow together with my library of books, the portrait of my grandfather Richard Salter Storrs and all my pictures except those bequeathed" otherwise.

B. Miss Storrs died in 1907 and Storrs Library was thereafter established.

C. As of 1990, the Storrs Library property included a library building and its adjacent parking lot (the "Library Facility"), along with baseball fields, a cottage, a museum and additional land.

D. By this time, the population of the Town had significantly increased. Storrs Library and the Town sought to renovate and substantially expand the Library Facility. The Town issued a bond to help finance the project.

E. On or about January 30, 1990, Storrs Library transferred ownership of the Library Facility (real estate shown as Lot A on a plan entitled "Plan of Land in Longmeadow, Massachusetts owned by Richard Salter Storrs Library" drawn by Durkee, White, Towne and Chapdelaine, dated August 28, 1989, Drawing No. 106-6212) to the Town. Storrs Library retained ownership of the balance of the property bequeathed to it by Ms. Storrs.

F. Concurrently with the property transfer, the Town and Storrs Library entered into an Operating Agreement dated January 23, 1990 (the "1990 Operating Agreement"), whereby Storrs Library was to serve as the operator of the Library Facility and a right of first refusal was provided to the Town on the remaining property of Storrs Library.

G. The parties now wish to enter into this Agreement to clarify certain matters that have arisen between them relating to the management and operation of the Library Facility.

NOW THEREFORE, in furtherance of the foregoing and in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. Effect of this Agreement. This Agreement amends and supersedes the 1990 Operating Agreement in its entirety.
2. Appointment of Operator. The Town hereby reappoints Storrs Library as the sole and exclusive operator, on the Town's behalf, of the Library Facility.
3. Term. This Agreement shall become effective upon the date hereof and shall continue in full force and effect for the remainder of the initial term of ninety-nine (99) years of the 1990 Agreement. After the expiration of this initial term, this Agreement shall

automatically renew for an additional term of ninety-nine (99) years, unless Storrs Library sends written notice of termination to the Town at least sixty (60) days prior to the last day of this initial term, in which event this Agreement shall terminate as of the last day of this initial term.

4. Standard of Conduct. Storrs Library, in accepting its appointment, and in accordance with the fiduciary obligations of its Board of Trustees, agrees to act in accordance with prevailing standards for operating a free public library in Massachusetts, to apply prudent business practices in operating the Library Facility, and to use reasonable care and diligence in carrying out its responsibilities hereunder.

5. General Responsibilities of Storrs Library.

A. Except as otherwise provided in this Agreement, Storrs Library is hereby charged with the sole and exclusive management of the Library Facility and shall provide the Town and its residents with the services customarily provided by a free public library in Massachusetts and shall do and perform any and all activities reasonably related to and necessary for the service and convenience of the Town and its residents.

B. Storrs Library agrees not to knowingly permit the use of the Library Facility for any purpose inconsistent with a free public library in Massachusetts or which might be in violation of any government regulation or restriction. Storrs Library shall be expected to perform diligently such other acts and provide such services as are reasonable, necessary and proper in the discharge of its duties under this Agreement.

C. Storrs Library shall have the responsibility and full authority to operate and maintain the Library Facility as a free public library in Massachusetts in accordance with applicable laws and regulations and to provide all reasonable and necessary services related

thereto. In this regard, Storrs Library shall perform the following services with respect to the ongoing activities of the Library Facility:

(i) Recruit a Library Director in accordance with the process set forth at Paragraph 6 below, and set policies and goals for implementation by the Library Director. The Library Director, an employee of the Town, shall be charged with the day-to-day administration of the Library and supervision of the library personnel; Storrs Library, consistent with all applicable laws, shall establish policies and goals for implementation by the Library Director, and shall support the Library Director in the advocacy for and implementation of these policies and goals, which may include, but are not limited to: the establishment of library personnel positions, budgetary requests, salary levels and benefits and performance standards for the operation of the Library Facility. The Town's personnel policies shall be applicable to library personnel. The Library Director's functions may also include the performance of one or more of the services set forth in this Paragraph 5.C.(iii-xii), as delegated to the Library Director by the Board of Trustees of Storrs Library from time to time.

(ii) Periodically evaluate the performance of the Library Director and submit the results of the evaluation to the Select Board of the Town.

(iii) The Library Director shall deposit in a segregated bank account or accounts in the name of Storrs Library, all funds received from the operations of the Library Facility. Deposits may also be made by the Library Director or the Library Director's designee. These funds may only be expended for the benefit of the Library Facility and its operation.

(iv) Work with the Library Director in developing and advocating for a budget (the "Library Budget") for the Library Facility and its operation as part of the Town budget and monitor and update the Library Budget on a regular basis. In order to facilitate the

Town's budgetary planning and appropriations process, Storrs Library shall keep the Town fully and timely apprised of the Library Facility's budgetary needs. It is understood that the Town, subject to and consistent with applicable law, is responsible for determining the procedures it uses when appropriating funds, and that the Town will use the said procedures when appropriating funds for the Library Facility and its operation, provided that, barring a conflict with law, nothing in the said process shall be construed to conflict with or derogate from any other provision in this Agreement, including Paragraph 9 below.

(v) Maintain all library-specific licenses and certifications required for the operation of the Library Facility.

(vi) Purchase books, print and non-print materials, and other reading and educational materials and supplies and equipment reasonably necessary to operate the Library Facility as a free public library.

(vii) Establish and maintain true, accurate and complete books of account, using accounts and classifications consistent with prevailing practice and approved by the Town. Storrs Library shall collaborate with the Town to ensure that all budgetary accounting accurately reflects the full extent of the Town's appropriations for the Library Facility.

(viii) Prepare and deliver to the Town an annual statement of income and expenses in reasonable detail within one hundred and fifty (150) days after the end of each fiscal year. Storrs Library shall prepare and deliver an annual report to the Town describing the operations of the Library Facility, such report to be delivered to the Town one hundred and fifty (150) days after the end of each fiscal year. Storrs Library shall immediately report any major problems pertaining to the Library Facility to the Town.

(ix) Any books and records kept by Storrs Library for the Library Facility shall be maintained at the Library Facility. Storrs Library shall make available to the Town and its agents, accountants and attorneys during normal business hours all books and records pertaining to the Library Facility, and Storrs Library shall promptly respond to any questions of the Town with respect to such books and records and shall confer with the Town at all reasonable times, upon request, concerning the operation of the Library Facility.

(x) To the extent possible, provide all necessary data and information to the Town in order for the Town to provide for the orderly payment of accounts payable, employee payroll taxes, insurance premiums and any other operating expenses incurred in operating the Library Facility and which are required to be paid by the Town.

(xi) Investigate and report to the Town, upon request, any financial irregularities.

(xii) Implement all policies and procedures reasonably necessary for the operation of the Library Facility consistent with applicable laws and regulations.

6. Selection of Library Director.

A. To initiate a candidate search when the position of Library Director is vacant, Storrs shall first notify the Town Manager in writing that it wishes to initiate a search for candidates.

B. Storrs Library shall form a committee (the "Search Committee") to conduct the candidate search. The Town Manager or his/her designate shall serve as an ex officio non-voting member of the Search Committee ("Town Committee Member").

C. At all points relevant to the candidate search and selection of an Executive Director, Storrs Library and the Search Committee shall coordinate with the Town's

Human Resources Department, and shall take direction from the said Department as necessary or appropriate to ensure compliance with applicable law and Town hiring and employment policies.

D. The Search Committee shall select up to three qualified candidates to present to the Trustees. At a meeting where a quorum of the Search Committee, including the Town Committee Member, is present, the Trustees may select one candidate to be presented to the Select Board for potential appointment. The Trustees may designate any remaining candidates as alternates. The Trustees shall designate one of its members to present the candidate to the Select Board.

E. At a meeting of the Select Board, the Trustees' candidate shall be presented by the Trustees' designated member. The Town Manager shall give to the Select board his/her recommendation as to the candidate presented. Should the Select Board not appoint the candidate presented, the Trustees may present any designated alternate.

7. The Town shall maintain the Library Facility, including all fixtures thereto, all external grounds that are part of the Library Facility including parking areas and walkways, in good, clean and safe condition with all permits and licenses in place, for use as a free public library. With respect to Storrs Library's use of private funds for repairs, alterations, or changes in operations that may reasonably be expected to materially increase the Town's appropriation or maintenance burden, Storrs Library shall take no action without first consulting with the Town and obtaining the Town's written consent to such action, such consent not to be unreasonably withheld.

8. Ex Officio Representation. For so long as this Agreement shall be in effect, the Town through its designee shall be entitled to ex officio representation on Storrs Library's Board of Trustees in the form of one non-voting seat on the said Board.

9. Town Department Meetings. The Library Director shall, at the request of the Town, attend and participate in such meetings of the Town's department heads as the Town may convene from time to time, it being expressly understood that (a) The Richard Salter Storrs Library Inc. is not a department of the Town, or an instrumentality of government, or otherwise within government, but rather is a public charitable trust established and operated for the benefit of the Town's inhabitants; and (b) the Library Director is not a department head within the meaning of the Town's Charter. Consistent with this Paragraph, the non-governmental status of Richard Salter Storrs Library, Inc. shall be reflected in such administrative code or plan of organization or reorganization of the Town's government as the Select Board of the Town may approve, promulgate or maintain.

10. Procurement. Storrs Library recognizes its obligations to comply with Massachusetts procurement statutes in the use of public funds and shall work with the Town to ensure such compliance.

11. Annual Financial Review. Storrs Library shall cause a formal review to be made of the financial records of Storrs Library by a licensed independent Certified Public Accountant selected by Storrs Library, and a copy of such review shall be provided to the Town as soon as it is available after the end of each annual fiscal period. The cost of the said review shall be paid by Storrs Library. To the extent necessary or appropriate, the Town shall cooperate with Storrs Library in its discharge of its obligations under this Paragraph and will, upon request, supply all documents and information in its possession which may be necessary for such review.

12. Property Interests.

A. All personal property associated with the Library Facility, including without limitation all furniture, supplies, computers, office equipment, books, print and



non-print media, and other reading and educational materials, purchased in whole or in part with public funds is now and shall be the property of the Town. All personal property associated with the Library Facility and affixed to the real estate is likewise the property of the Town.

B. All personal property associated with the Library Facility and not affixed to the real estate, such as furniture, carpeting, books, historic papers, and works of art, that (a) was bequeathed to Storrs Library by Sarah W. Storrs, or (b) was or shall be purchased exclusively with private funds of Storrs Library, is now and shall be the property of Storrs Library, except to the extent that any such property may be given to and duly accepted by the Town in accordance with law on or after the date of this Agreement. It is the intent of the parties, that all personal property described in this Paragraph shall be specified in the inventory described in the next Paragraph (C).

C. Storrs Library shall maintain an inventory (the "Inventory") itemizing all of its personal property described in Subsection 12.B. above. An initial Inventory, agreed upon by the parties as of the effective date of this Agreement, is annexed hereto as Exhibit A. The Inventory shall be reviewed and updated annually, and shall be submitted to the Town by the Library Director within sixty (60) days of the end of the fiscal year. If, in any year, the contents of the Inventory are revised, both the Town and Storrs Library must agree upon such revisions.

13. Insurance. The Town agrees to include the Library Facility building in the Town's blanket casualty insurance policy and to pay the premiums attributable to such coverage and Storrs Library agrees to reimburse the Town for the cost of such coverage. The Town also agrees to carry insurance on the value of property owned by the Town as set forth in Paragraph 12 above, and to pay the premiums attributable to such coverage without

reimbursement by Storrs Library. The Town also agrees to carry casualty insurance coverage for furniture, carpeting, and other personal property owned by Storrs Library as set forth in Paragraph 12 above, and Storrs Library agrees to reimburse the Town for the cost of such coverage. The Town agrees to acquire and pay the premiums for landlord's risk general liability insurance with respect to the Town's ownership of the Library Facility, and the said policy shall include Storrs Library as an additional named insured. Storrs Library agrees to acquire and pay the premium for a general liability policy covering the operation of the Library Facility by Storrs Library. Storrs Library also agrees to acquire and pay the premium for officers' and directors' errors and omissions coverage.

14. Inspection by the Town. During the term hereof, the Town shall at reasonable times have the right to inspect all parts of the premises comprising the Library Facility. The Town, through its Select Board, and Storrs Library, through its Board of Trustees, agree, at the reasonable request of the other, to meet and discuss matters relating to the operation of the Library Facility.

15. Liability and Indemnification.

A. Storrs Library shall not be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder for any reason beyond its control, including without limitation, war or acts of God. To the extent permitted by law, Storrs Library agrees to indemnify, defend and hold harmless the Town from and against any damages, claims, expenses, losses or actions resulting from any negligent or tortious acts or omissions to act by Storrs Library or its employees and/or agents, or from any defaults in the terms and conditions of this Agreement which acts, omissions and/or defaults result, directly or indirectly in injury or damage to the Town, the Library Facility or to any third party. Such

indemnification shall include, but not be limited to, all reasonable counsel fees and costs of litigation.

B. The Town shall not be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder for any reason beyond its control, including without limitation, war or acts of God. To the extent permitted by law, the Town agrees to indemnify, defend and hold harmless Storrs Library from and against any damages, claims, expenses, losses or actions resulting from any negligent or tortious acts or omissions to act by the Town or its employees and/or agents, or from any defaults in the terms and conditions of this Agreement which acts, omissions and/or defaults result, directly or indirectly in injury or damage to Storrs Library or to any third party. Such indemnification shall include, but not be limited to, all reasonable counsel fees and costs of litigation.

C. Nothing contained herein shall preclude either party from asserting any claims or suits against the other party which may arise out of the terms and provisions of this Agreement.

D. The obligation of Storrs Library to indemnify the Town as described in Paragraph 15(A) above, and the obligation of the Town to indemnify Storrs Library as described in Paragraph 15(B) above, are subject to the requirements that the party seeking indemnification shall provide the other party with reasonable notice of any such damages, claims, expenses, losses or actions and provide the other party with the opportunity to assert all available defenses thereto. The party seeking indemnification shall cooperate fully with the other party in connection therewith.

16. Right of First Refusal.

A. If at any time Storrs Library determines that it intends to transfer any portion or all of the real estate shown as Lot C on a plan entitled "Plan of Land in Longmeadow, Massachusetts owned by Richard Salter Storrs Library" drawn by Durkee, White, Towne and Chapdelaine, dated August 28, 1989, Drawing No. 106-6212 (the "Premises") it shall give at least seventy-five (75) days' prior written notice to the Town of

- (i) such intention;
- (ii) a description of the portion of the Premises proposed to be transferred;
- (iii) the name, business and residential address of the proposed transferee; and
- (iv) the consideration and terms of sale or transfer.

B. Within sixty (60) days of its receipt of such notice (the "60-Day Period") the Town shall have and may exercise an option to purchase or accept that portion of the Premises proposed to be transferred on the same terms and for the same consideration as is set forth in such notice. In any event, the Town by written notice to be received by Storrs Library within fifty (50) days of the date of such notice from Storrs Library shall inform Storrs Library of its intent as to the exercise of such option.

C. If the Town indicates that it does not intend to exercise the option or if it indicates that it will exercise the option but fails to timely do so, then Storrs Library may transfer the portion of the Premises proposed to be transferred to the proposed transferee, free from the terms hereof.

D. Storrs Library shall pay any and all survey, legal, and other costs associated with the subdivision of the Premises for purposes of transfer pursuant to the option hereby granted.

E. If the Town gives timely and proper notice of its intention to purchase the Premises or portion thereof proposed to be transferred the transfer shall be subject to the following terms:

- (i) The closing of the transfer shall occur within the 60-Day Period.
- (ii) The Premises or portion thereof are to be conveyed at the closing by a quitclaim deed of Storrs Library conveying good and marketable title to the same to the Town free from all encumbrances except: (a) the provisions of existing building and zoning laws; (b) easements and restrictions of record; (c) such taxes for the current real estate year as are not then due and payable; and (d) any liens for municipal betterments.
- (iii) To enable Storrs Library to make conveyance as hereinbefore provided, Storrs Library may, if it so desires, at the time of the delivery of the deed, use purchase money or any portion thereof to clear the title of any encumbrances or interests.
- (iv) Water charges for the then-current year shall be apportioned and shall be adjusted as of closing date and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable to Storrs Library at the time of delivery of the deed. All water charges not due and payable on the date of delivery of the deed will be assumed and paid by the Town.
- (v) If Storrs Library shall be unable to give title or make delivery of said deed as hereinbefore provided or otherwise perform its obligations under this Paragraph 16 then its obligations under this Paragraph 16 shall cease.

17. Notices. All notices required or permitted hereunder shall be given in writing by hand delivery with receipt acknowledged or by Certified United States Mail. Notice shall be deemed given upon delivery, or, if given by mail, upon depositing with the United States Postal Service. Notice shall be delivered or mailed to the parties at the following addresses or at such other places as either party shall designate in writing:

Richard Salter Storrs Library  
693 Longmeadow Street  
Longmeadow, MA 01106

Town of Longmeadow  
C/O Select Board  
20 Williams Street  
Longmeadow, MA 01106

18. Assignment. Neither party shall assign its obligations and responsibilities under this Agreement without the prior written approval of the other party.

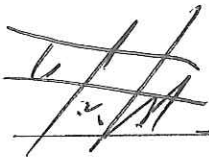
19. Entire Agreement. This writing contains the entire agreement between the parties and, subject to the provisions of Paragraph 18 above, shall be binding upon and inure to the benefit of their successors and assigns. Any modifications or changes in this Agreement shall be effective only if in writing and signed by the parties hereto.

20. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

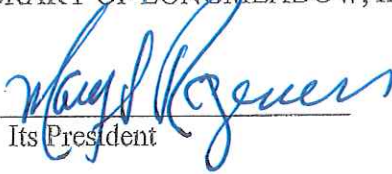
IN WITNESS WHEREOF, the parties hereto have signed this Agreement in duplicate as a sealed instrument as of the date first written above.

Witness:

  
\_\_\_\_\_

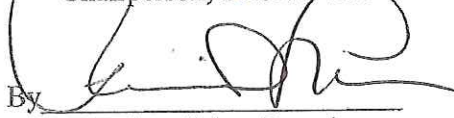
  
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THE RICHARD SALTER STORRS  
LIBRARY OF LONGMEADOW, INC.

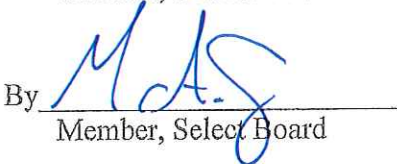
By   
Its President

TOWN OF LONGMEADOW

By   
Chairperson, Select Board

By   
Member, Select Board

By   
Member, Select Board

By   
Member, Select Board

By   
Member, Select Board

EXHIBIT A

Initial Inventory

To be determined, agreed upon and attached hereto by the parties  
prior to the July 1, 2020 start of the fiscal year 2021.