

**Meeting Date:** 5/3/2016

**Report Type:** Consent

**Report ID:** 2016-00415

**Title:** Lease Agreement for Shepard Garden and Arts Center

**Location:** District 3

**Recommendation:** Pass a Motion: a) finding that it is in the best interests of the City to lease the Shepard Garden and Arts Center without bidding per City Code Section 3.68.110 E; b) approving the Lease Agreement with the Shepard Garden & Arts Center (SGAC), a non-profit corporation, for the City building at 3330 McKinley Blvd. for a 10-year term at no cost in consideration of the public programs offered by SGAC and managing building rentals; and c) authorizing the City Manager or his designee to execute the Lease Agreement with SGAC.

**Contact:** Jill Nunes, Recreation Manager, (916) 808-6095, Department of Parks and Recreation

**Presenter:** None

**Department:** Parks & Recreation Department

**Division:** Community Centers

**Dept ID:**

**Attachments:**

1-Description/Analysis

2-Shepard Garden & Arts Center Lease

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### **City Attorney Review**

Approved as to Form

Sheryl Patterson

4/20/2016 1:37:12 PM

### **Approvals/Acknowledgements**

Department Director or Designee: Christopher Conlin - 4/5/2016 5:44:13 PM

## Description/Analysis

**Issue Detail:** Since 1986 the City has leased out the building located at 3330 McKinley Blvd. in McKinley Park known as the Shepard Garden and Arts Center (Center) to the non-profit organization formed to support the horticulture and related arts and crafts programs at this Center; the Shepard Garden & Arts Center (SGAC). SGAC's operations are supported by an affiliated non-profit comprised of neighborhood property owners and citizens called the Friends of the Shepard Garden and Arts Center, Inc. SGAC coordinates with the various garden and arts clubs who use the Center for their meetings, programs and exhibitions. SGAC also manages rentals of the Center for special events. The City Code allows for leasing City property to non-profit organizations without bidding for a 10 year term. It is time to formally renew the lease.

The new lease continues the same use of the Center by SGAC, but changes the City's responsibilities by eliminating the requirement to provide building monitors. Even though SGAC had reimbursed the City for the monitor's time, it was too costly to retain those employees to help manage this Center. The new lease also limits the City's maintenance and repair responsibilities consistent with the existing leases of other community centers to non-profit organizations. Public Works staff recently surveyed the building and identified needed dry rot repairs that the City commits to undertake in the Lease Agreement.

**Policy Considerations:** SGAC was formed in 1981 to support the Center and has offered garden and arts programs at the Center for over 30 years. The continued use and occupancy of the Center by SGAC will benefit the public and the surrounding neighborhoods.

**Economic Impacts:** None

**Environmental Considerations:** The continued use of the Center by SGAC for meetings, programs, exhibitions, and special events is exempt from environmental review under the CEQA Guidelines Section 15301, Existing Facilities.

**Sustainability:** Not applicable.

**Commission/Committee Action:** Not applicable.

**Rationale for Recommendation:** City Code Section 3.68.110 E provides for leasing City buildings to non-profit organizations without bidding and for a 10- year term if the organization membership is comprised of primarily City residents. The consideration for the waiver of rent is that SGAC commits to continuing the use of the Center for the primary purpose of garden and arts clubs' meetings, programs and exhibitions that are open to the public, and overseeing rental of the Center for special events.

**Financial Considerations:** The Lease Agreement does not impose rent, so there is no revenue generated from this Center for the City. SGAC is responsible for routine janitorial and maintenance responsibilities. The City retains responsibility for minor repairs and any major repairs or system replacements that may be needed are subject to the City's annual budgetary allocation. The elimination of City building monitors will reduce the City's operating costs.

**Local Business Enterprise (LBE):** Not applicable.

**LEASE AGREEMENT SHEPARD GARDEN AND ARTS CENTER  
3330 MCKINLEY BLVD**

THIS LEASE AGREEMENT (“Lease” or “Agreement”), is made as of \_\_\_\_\_, 2016 (“Execution Date”) by and between the CITY OF SACRAMENTO, a municipal corporation (“City”), and the SACRAMENTO GARDEN & ARTS CENTER, a California nonprofit corporation (“SGAC”) (collectively, the “Parties”).

**BACKGROUND**

- A. SGAC was established in 1981 to support the City’s Shepard Garden and Arts Center. The Center provides a meeting place and an event venue for SGAC and other community organizations and clubs which are affiliated with SGAC (the “Member Clubs”) whose main focus is in horticulture, flower arranging, conservation, history, antiques and the arts, including painting, photography, ceramics, metal work, weaving, and other related arts and crafts. The Center is also available for rent for private events. SGAC is supported by another non-profit corporation, The Friends of the Sacramento Garden and Arts Center Inc., which is comprised of neighborhood property owners and concerned citizens who raise funds for specific projects related to the Center.
  
- B. In 1986, the City leased the Center to SGAC and no monetary rent was charged in consideration of SGAC’s use and management of Member Clubs’ use of the Center and rentals of the Center by other community groups. The City provided certain of its employees to serve as building monitors to assist with set-ups for special public events and rentals of the Center, and SGAC reimbursed the City for such employee costs. The City also maintained the building and provided custodial services and SGAC paid for all utilities. The lease was renewed in 1991 and 1996 on the same terms and conditions, with the exception that custodial services were no longer provided by the City after 1996. The lease expired on June 30, 1999, and has been extended by its terms by mutual consent on a month-to-month basis.
  
- C. Due to budgetary shortfalls, the City has leased many of its community centers to non-profit organizations to allow for continued operations to benefit the community. The City desires to update the lease agreement with SGAC so that its terms are consistent with other leases of City community center buildings. In particular, the City no longer has the resources to provide building monitoring services.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual commitments as hereinafter set forth, SGAC and City enter into this Lease for the purpose of establishing each Party’s rights and obligations with regard to the occupancy, use and maintenance of the Premises as follows:

**1. LEASE OF PREMISES**

Subject to the terms and conditions hereinafter set forth, City hereby leases to SGAC, and SGAC hereby leases from City, the building known as the Shepard Garden and Arts Center which includes a fenced outdoor patio area (the "Center"), the exterior planting areas as shown in Exhibit A, the adjoining parking lot and driveways, and the north patio located within a portion of McKinley Park, commonly known as the Shepard Garden and Arts Center located at 3330 McKinley Blvd., Sacramento, California 95816 (collectively, the "Premises"), as depicted in Exhibit "A" attached hereto and which is incorporated herein. SGAC's occupancy and access rights are as follows:

- a. The exclusive right, subject to City's reserved rights in Section 7, to use and occupy, and to rent and manage use of the Premises.
- b. SGAC, Member Clubs, and their respective employees, agents, and invitees shall have the right to enter McKinley Park as necessary to gain ingress, egress and access to and from the Premises along sidewalks, pathways and other paved areas during hours when the park is open to the public and along the paved paths leading to the Center when the park is closed to the public.

**2. TERM**

As authorized by the City Council pursuant to City Code section 3.68.100 E, the "Term" of this Lease shall extend for ten (10) years commencing on April 1, 2016 (the "Effective Date") and expiring on March 31, 2026, subject to prior termination by either Party as provided in this Lease.

- a. If SGAC shall for any reason hold over at the end of the Term of this Lease with City's consent, express or implied, such holding over shall not be a renewal of this Lease but shall be a month-to-month tenancy subject to the terms and conditions of this Lease or subject to such other terms as City may specify.
- b. Either Party shall have the right to terminate the Lease for its convenience at any time during the Term by providing the other Party with prior written notice and specifying the effective date the Lease will terminate. If the Lease is terminated by SGAC for its convenience, at least ninety (90) days prior notice is required unless City, in its sole discretion, may allow a shorter notice period. If the Lease is terminated by City for its convenience, at least one hundred and eighty (180) days prior written notice is required unless SGAC, in its sole discretion, may allow a shorter notice period. City shall strive to provide SGAC with a one (1) year advance notice of City's intent to terminate the Lease for its convenience to allow SGAC an opportunity to secure another location to continue its operations. If either Party terminates the Lease for its convenience, the Parties will cooperate to strive to accommodate any prior planned Member Club event or rental reservation which is to occur after the date of termination, and SGAC will be entitled to retain the revenue for such event or reservation but

subject to deduction of any City costs to set-up, monitor or clean-up after such event or rental.

### **3. RENT**

In lieu of monetary rent, the consideration for City's entering into this Lease is SGAC's obligation to continue to occupy and operate the Premises for the benefit of the Member Clubs and the public and to assume responsibility for: (a) building monitoring when it is rented for use by other groups; (b) custodial and garbage services and utilities as set forth in Section 4; and (c) maintenance of the Premises as set forth in Section 9.

SGAC shall use the revenues received from SGAC's events open to the public (if any), revenues from Member Clubs' use of the Premises (if any), and rentals as described in this Lease to fund SGAC's obligations under this Lease, including, without limitation, to manage and oversee the uses of the Center and to pay utility, garbage, custodial service, and maintenance charges as set forth in Sections 4, 8, and 9. After meeting the foregoing obligations, SGAC may allocate the remaining revenues (the "Excess Revenues") into the following segregated accounts, with the amounts as determined by SGAC: (i) operating reserve, (ii) maintenance reserve, and (iii) capital improvement reserve. SGAC may not charge against the revenues received from Member Clubs and rentals the costs to manage its non-profit organization which are unrelated either to its obligations under this Lease or its legal obligations for qualifying as a 501(c)(3) non-profit corporation, such as accounting, tax preparation and related legal fees.

### **4. UTILITIES; CUSTODIAL SERVICES AND SUPPLIES**

- a. SGAC shall pay all charges and assessments for telephone and internet services; utilities, including gas and electricity; security services; garbage removal; janitorial and cleaning services, including the cost of custodial supplies; and other public service conveniences used on the Premises during the Term of this Lease except those designated as City's responsibility under Section 4(b).
- b. City shall pay all charges and assessments for water, sanitary sewer and storm drainage services that are associated with SGAC's use of the Premises until City, at its sole cost, installs a separate meter which only measures water consumption within the Center, and is not connected to the adjoining park irrigation system. To the extent that the irrigation system(s) serving the outdoor and north patio areas and the exterior planting areas is not connected to the park irrigation system and is connected to the Center meter, SGAC will also be responsible to pay those metered charges. City shall provide SGAC with at least a ninety (90) day period to: (i) monitor the meter's water consumption billing, (ii) object to accuracy of the billing, and (iii) budget such costs before SGAC becomes obligated to assume these charges and assessments.

5. **PERMITTED USES**

- a. SGAC is permitted to use the Premises for its own meetings, activities and exhibitions and those of SGAC's Member Clubs. SGAC may also rent the Premises for uses which benefit the community and for the purpose of generating revenues needed to fund SGAC's costs to operate and maintain the Premises. SGAC shall only charge reasonable fees for such rentals and shall provide public notification of the availability of the Premises for rent for special events, subject to necessary rules and regulations invoked by SGAC for the purpose of conducting its activities and protecting the Premises and the rights of all persons who desire to use the facilities in a safe, peaceful and lawful manner. No smoking is allowed within the Premises. City reserves the right to apply reasonable rules and regulations of the Parks and Recreation Department of the City of Sacramento to the use of the leased Premises, upon thirty (30) days' notice to SGAC.
- b. SGAC shall, during the Term of this Lease, occupy, maintain and operate the Premises as a community center for the primary purposes of garden and arts clubs' meetings, activities and exhibitions. SGAC may also use the Premises for artistic, cultural, educational, recreational, social and commercial activities and other activities of benefit to the community. The failure of SGAC to so occupy, maintain and operate the Premises shall result in a breach of this Lease.
- c. SGAC shall neither permit nor carry on any activity which is prohibited as a nuisance under City Code Section 8.04.100, and SGAC shall not be held liable for a condition related to Premise's systems, fixtures, facilities and components which are City's maintenance responsibilities under Section 10 of this Lease.
- d. SGAC shall not operate any amplified sound, which includes a music system, or allow the Member Clubs or renters to use amplified sound in a manner which interferes with the reasonable use and enjoyment by the public of the adjacent areas of McKinley Park and the use and enjoyment of private property adjacent to the Premises. This restriction is based on the definition of "amplified sound" and the limitations on the time and volume of amplified sound in a park as set forth in Sections 12.72.010 and 12.72.110 of the City Code. SGAC shall immediately comply with any oral or written requests of the Director of the City's Parks and Recreation Department or his or her designee, which shall be determined on a case-by-case basis and may be due to complaints, concerning the use of amplified sound, including, but not limited to, a request to (i) cease the use of said equipment; (ii) restrict the hours of use of such system; or (iii) reduce the level of sound output of such system.

6. **NO WARRANTIES REGARDING SUITABILITY OF PREMISES**

City makes no representation or warranty of any kind, express or implied, as to the suitability of the Premises for the permitted uses. SGAC currently occupies the Premises and represents and warrants that it has independently made a full and thorough investigation and examination of the Premises and that it is entering this Lease relying upon facts ascertained from said independent investigation.

7. **CITY'S RIGHT OF ENTRY AND RESERVED USE**

- a. Upon twenty-four (24) hours' advanced written notice to SGAC of the date and time of entry, City reserves the right to enter the Premises at reasonable times for the purpose of maintaining and repairing the Premises. City's entry shall not unreasonably interfere with any planned meetings, events, or rentals of the Premises. However, notwithstanding the foregoing, City may enter the Premises without prior notice if there is an emergency or the need for immediate maintenance and repairs to protect the Premises from damage or to protect the public.
- b. Upon ten (10) days' advanced written notice, City, at its sole discretion, may make a detailed and formal inspection and evaluation of the Premises to ensure compliance with this Lease by SGAC. SGAC shall have the right to be present at any such inspection. City's entry shall not unreasonably interfere with any planned meetings, events, or rentals of the Premises. If any deficiencies related to SGAC's obligations under this Agreement are discovered, City shall provide SGAC with a report in writing and identify the scope of work required for the correction. If SGAC agrees that the deficiencies are SGAC's responsibility under this Agreement, they shall be remediated by SGAC within thirty (30) days after receipt of the written report. If SGAC objects to any item listed by City as a deficiency for which SGAC is responsible to correct, or objects to the scope of the corrections, then the Parties shall meet and confer for up to a thirty (30) day period to determine if an amicable resolution is feasible. If the correction is not to be undertaken by either Party, then this Lease may be terminated as provided for in Sections 2(b) and 18, as applicable.
- c. City reserves the right to enter and make use of the Premises, and City shall not be liable to SGAC for any loss of anticipated revenues or for SGAC's loss of occupation and quiet enjoyment of the Premises due to entry by City except as specified below, under the following conditions:
  - (1) **Meetings and Events** – City may use the Premises for community meetings or events sponsored or co-sponsored by City up to four (4) times a year at no cost to City subject to the following: (a) City's use shall be on a space available basis and City may not displace persons or groups which have prior rental reservations confirmed or issued by

SGAC for dates or times which would conflict with the proposed date and time of City's meeting or event; (b) City shall provide SGAC with at least ten (10) days' advance written notice of the date, time and nature of the City-sponsored meeting or event; and (c) if feasible based on the anticipated number of participants, City shall use the room(s) as designated by SGAC rather than the room(s) requested to minimize interference with SGAC's operations.

- (2) Emergency Shelter – City shall have the right to occupy all or a portion of the Premises in the event of a public emergency which requires shelter be provided to the public due to severe inclement weather (including excessive heat or extremely cold temperatures) or natural disasters, or in the event of other calamities that create a need to use the Premises for public shelter and/or for public safety operations to minimize the potential loss of life. City shall strive to provide at least twenty-four (24) hours' advanced written or oral notice to SGAC of the date and time and rooms it intends to occupy and the expected duration that the Premises as a shelter would need to remain open to the public, or as an emergency command or service center would remain occupied by City and other government agencies. City shall be responsible for any damage caused to the Premises by the public or by City and for utility and building service costs during such occupancy period, and City shall assume the additional janitorial and repair costs needed due to such occupancy to make the Premises suitable again for rentals and programs by SGAC. City shall reimburse SGAC for any lost revenues from rentals which had to be cancelled due to City's occupancy of the Premises. If City's occupancy extends for a prolonged period of time and the lost anticipated rental revenue caused by such occupancy could affect SGAC's ability to meet its financial obligations under this Lease, the Parties shall meet to determine how to address that shortfall to avoid a default by SGAC.

## **8. SGAC'S OPERATION OF THE CENTER**

- a. The Premises shall be operated and maintained by SGAC only as a non-profit activity in accordance with its 501(c)(3) non-profit status as designated by the United States Internal Revenue Service. Use of the Premises by some other person or organization, including Member Clubs and rentals, shall not relieve SGAC of its obligations under this Lease.
- b. SGAC agrees that in its operation of the Premises, no discrimination, distinction, or restriction shall be made on account of the sex, color, race, religion, national origin, ancestry, sexual orientation, marital status, disability or medical condition, genetic information, citizenship, primary language or immigration status of a person or group contrary to the provisions of Section 51 of the Civil Code of the State of California, which is incorporated herein by

reference as if set forth herein in full, or any other applicable federal, state, or local law prohibiting discrimination.

- c. SGAC shall actively seek to publicize participation in activities at the Premises and rental of the Center through the Internet, informational flyers, signage at the Premises and/or other media as determined by SGAC. SGAC's regulations governing rentals and program fees may impose a rate differential between members and non-members of SGAC and Member Clubs, but such rates shall not effectively exclude non-member rentals or participation.
- d. SGAC shall not place any permanent or temporary signage, including, without limitation, commercial or advertising signs, on or visible from the exterior of the Premises, unless the sign is related to the name of the Center, SGAC's organizational name, directional and safety signs, or a program or event at the Premises and the sign is in compliance with the City Sign Code. Any sign placed in violation of the City Sign Code shall be subject to immediate removal by City without compensation or liability to SGAC and SGAC shall be responsible for all costs associated with such removal. SGAC may allow Member Clubs and non-member renters to place signage under the same restrictions.
- e. If there are any employees, volunteers or subcontractors of SGAC who are to perform services at the Premises on behalf of SGAC and are in a position to exercise supervisory or disciplinary authority over any minor child, then SGAC shall first obtain a Department of Justice (DOJ) clearance for all such employees and volunteers, and require such clearance be provided by its subcontractors and their employees and volunteers, prior to any such persons exercising such supervisory or disciplinary authority over minors at the Premises. SGAC shall submit proof or certification of such DOJ clearances to City upon request. Any person who has been investigated pursuant to this Section 8(e) and whose conviction of an offense listed in Public Resources Code Section 5164 was discovered by such investigation shall be prohibited from working or performing services at the Premises. Violations of this requirement by a subcontractor who fails to obtain DOJ clearances for its employees and volunteers shall not constitute a breach of this Lease by SGAC.
- f. SGAC shall conduct its activities in a safe and professional manner and in accordance with all applicable laws, codes, orders, regulations and ordinances of all governmental authorities having jurisdiction over the Premises and the activities therein, except to the extent that compliance will require SGAC to undertake obligations imposed on City under Section 10.
- g. SGAC shall not deposit, spill, pour, discharge or otherwise release into, or through the soil or groundwater on the Premises any hazardous materials. The terms "hazardous materials" shall include any substance, waste, material, or pollutant which poses a hazard to the environment (except and

excluding those materials which are ordinarily used in gardening and art activities and/or in connection with the operation or maintenance of the Premises so long as they are used in moderate amounts and in compliance with applicable laws), or causes the Premises to be in violation of any federal, state or local law relating to contamination of real property.

- h. SGAC shall promptly comply with reasonable written orders that may be issued from time to time by the City as to matters concerning the operation of the Premises as it may affect the best interests of the public using the Center and the adjacent City park. However, SGAC is not responsible for regulating use of the City park. Additionally, City shall not issue orders under this Section 8(h) which require use of the Center's restrooms by park patrons or the public when the Center is not open to the public for an event. Nonetheless, SGAC and Member Clubs may restrict access to the bathrooms by persons who are not at the Center to attend the public event.

## **9. SGAC'S MAINTENANCE RESPONSIBILITIES**

Except for City's maintenance obligations set forth in Section 10, SGAC shall be responsible for maintenance of the Premises as follows:

- a. SGAC shall maintain the furniture, fixtures and equipment in the Center building in a condition and repair equal to or better than existing on the Effective Date, reasonable wear and tear excepted. All broken or damaged items shall be removed and, if appropriate, replaced by SGAC within thirty (30) days.
- b. SGAC shall, at its cost, keep and maintain the Premises in a safe, clean, sanitary, orderly and attractive condition. SGAC shall, at its sole cost and expense, be responsible for maintaining the interior of the Center building, the garden areas within the Premises, and the adjoining patio areas within the Premises, but not the parking lot, driveways, pathways and common areas within the Premises except for removal of trash and leaf debris. SGAC may move the leaf debris from the parking lot, driveways and patios onto the park grass areas. In particular, SGAC shall be solely responsible for maintenance, repair and replacement of the following Center building systems, fixtures and components necessitated by the normal use and wear of the facilities, but excluding damages caused by vandalism:
  - (1) Security alarm system;
  - (2) Interior light bulbs and fixtures;
  - (3) All interior improvements including cosmetic, but not structural work, on walls, ceiling tiles, flooring and window coverings, doors and windows, including glass replacement;
  - (4) Painting the interior of the Center, including removal of graffiti unless caused by illegal entry and vandalism;
  - (5) Telephone and computer-related wires and systems;

- (6) Minor plumbing (e.g., toilet malfunction) and related incidental expenses; and
  - (7) Signage.
- c. Upon SGAC's failure to properly maintain or repair the Premises or with the mutual agreement of the Parties, SGAC shall allow City to perform such work, but such right shall not be construed as constituting a duty upon City to perform such work. Prior to City performing such work, City shall give written notice of its intention to perform the work in accordance with Section 7(a) and the estimated cost to SGAC, if any. SGAC shall reimburse City for costs of the work, if reimbursement is required, within sixty (60) days after receipt of the invoice from City which details the work performed and costs incurred.
  - d. In addition, SGAC shall provide City with a written report annually which describes all maintenance work undertaken by SGAC during the prior period. At least once annually, the Parties shall meet to inspect the Center and review the Premises maintenance work performed by the Parties.

**10. CITY'S MAINTENANCE RESPONSIBILITIES**

- a. City shall be responsible for maintenance, repair and replacement of the following systems, fixtures, facilities and components within the Premises:
  - (1) The building HVAC system;
  - (2) Electrical wires and plumbing pipes in conduit or inside interior walls, floors and/or ceiling;
  - (3) Structural foundation, floors, walls and ceiling;
  - (4) Roof and window leaks, defects and weather-proofing;
  - (5) Painting and caulking the exterior of the building if signs of paint deterioration exist;
  - (6) Doors and door hardware including locks;
  - (7) Fencing and gates, parking lot, driveway and patio pavement;
  - (8) Landscaping irrigation system within the Premises which includes the exterior planting areas and patios;
  - (9) Common area pathways and paved areas;
  - (10) Lighting in the exterior building areas, common area pathways and parking lot; and
  - (11) Any damage to the Premises caused by vandalism, including exterior graffiti.
- b. SGAC shall report to 311 or the City's Contract Manager any problems with the Premises which requires maintenance by City. SGAC shall report to either 311 or the City's Contract Manager as soon as any of the following are observed:
  - (1) Graffiti, vandalism or other illegal activity in or around the building

- and adjacent parking lot and park facilities;
- (2) Exterior building or parking lot lighting is inoperable;
  - (3) Parking lot pavement cracking and uplifting presents a safety hazard;
  - (4) Roof leaks, electrical system default, plumbing system pipe ruptures, or if HVAC system becomes inoperable; and
  - (5) Any other problems which may pose a health or safety hazard.
- c. City's financial obligations to maintain and repair the Premises pursuant to this Lease are subject to City's discretionary annual budgetary allocation and City reserves the right not to undertake the maintenance and repair work or any major building repairs or system replacements. If the Premises requires significant repairs or system replacements, the Center is damaged or in disrepair, there are building structural or system failures, or upgrades are required to comply with ADA laws, and the costs have not been budgeted and the City is unwilling to fund the necessary corrective work, then SGAC shall have the right but not the obligation to perform such repairs or replacements, and such action shall not be construed as constituting a duty to undertake such work as may be needed in the future. If both City and SGAC elect not to make such repairs or replacements, then the Parties shall meet to determine if the Premises without such repairs or replacements is or will be unsafe or unsuitable for public use and the Lease must be terminated, or if the Lease can be modified to restrict use of certain areas of the Premises until the corrective work can be undertaken. If the Parties are unable to mutually agree to the proper course of action, City shall have the right to terminate the Lease with ten (10) days advance written notice if it determines in its sole discretion that the Premises will be unsafe or unsuitable for public use without such repairs or replacements. Notwithstanding the foregoing, if City elects not to perform the maintenance and repair responsibilities listed in this Section 10, then SGAC shall have the right to terminate this Agreement with ten (10) days advance written notice.
- d. Upon City's election not to perform its maintenance or repair obligations under this Lease or with the mutual agreement of the Parties, City shall allow SGAC to perform such work after City approval of the scope of work and SGAC's obtaining all necessary permits, but such right shall not be construed as constituting a duty upon SGAC to perform such work.
- e. City, at its sole cost, shall be obligated to complete the "City's Repair Obligations" listed in Exhibit "B" within the City's fiscal year of July 2016 to June 2017 ("FY16-17") if sufficient funds required for the items listed in Exhibit B are allocated to the Parks and Recreation Department for repairs to the Shepard's Garden and Arts Center in the FY16-17 City Budget. City shall have the sole discretion to determine what items to undertake in Exhibit B if some but not all of the funding required is included in the FY16-17 City Budget. In addition, if in the FY16-17 Budget or future City budgets a capital improvement project ("CIP") is established for the Shepard Garden and Arts

Center, the City would undertake additional improvements as funded under that CIP.

**11. REPORTING AND NOTIFICATION REQUIREMENTS**

- a. SGAC shall maintain records regarding its occupancy and use, the occupancy and use of its Member Clubs, and the occupancy and use by renters of the Premises and allow City to inspect such records during regular business hours.
- b. SGAC shall provide to City's Contract Manager an annual report of the use and rentals of the Center, which includes the number and type of shows, exhibits, meetings, and special events/rentals, rental fees, and the total annual revenues on a fiscal year (July-June) basis. SGAC shall include with the submittal an unaudited annual financial statement indicating revenues produced from the operation of the Premises and the manner in which said revenues were expended or retained. The annual statement shall be submitted on or before September 30 for the previous fiscal year.
- c. SGAC shall annually provide City's Contract Manager a list of the names of its volunteers and employees who work at the Center and the names of all other organizations (i.e., Member Clubs) which have been permitted to use the Center on a regular basis. Unless the list of SGAC's officers is posted on its website, at City's request SGAC shall provide City's Contract Manager with a list of the officers of SGAC's corporation and their contact information, which information may be provided by submitting a copy of the Statement of Information filed with the Secretary of State.
- d. SGAC shall immediately contact City's Contract Manager in the event of any incident of serious injury or illness that occurred at the Center which required emergency medical services.

**12. TAXES AND ASSESSMENTS**

SGAC shall in addition to other sums to be paid under this Lease, pay all personal property taxes which may be levied against its personal property and any possessory interest tax, per Section 107.6 of the California Revenue and Taxation Code, which may be levied by virtue of this Lease.

**13. SECURITY DEVICES**

SGAC may provide at its own expense any legal device, installations or equipment designed for the purpose of protecting the Premises from theft, burglary or vandalism; provided, however, that SGAC complies with the building and fire codes and obtains all required permits in connection with any such security systems or devices.

**14. IMPROVEMENTS; ALTERATIONS**

- a. SGAC shall not undertake any alterations or improvements to the Center building and facilities, install exterior signage except as allowed under Section 8, or remove any furniture, fixtures or equipment from the Center which are not trade fixtures or personal property of SGAC without City's prior written consent. City shall have thirty (30) calendar days to respond to SGAC's request to undertake alterations or improvements.
- b. If City permits SGAC to undertake alterations or improvements to the Premises, upon expiration or earlier termination of this Lease, those alterations or improvements which are affixed to the Premises shall become the property of City without any obligation to reimburse SGAC for said costs.
- c. SGAC shall pay in full all persons and entities that perform labor or provide materials for the work to be performed by SGAC at the Premises and shall not permit or suffer any mechanics' or materialmen's liens of any kind or nature to be enforced against City's property for such work or materials. SGAC shall indemnify and hold harmless City from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or arising from such work done, labor performed, or materials furnished.
- d. City has surveyed the Premises to identify upgrades needed for compliance with the federal Americans with Disabilities Act (ADA) and to prioritize such work. City has the sole discretion to determine when to undertake such work and City shall have no responsibility to SGAC to make the Premises compliant with all applicable federal and state disability access laws. Any improvements, repairs or maintenance required to be performed and any judgements, fines or penalties required to be paid by applicable regulatory order or court order in connection with ADA or state disability access compliance shall remain the obligation of City, with the exception of improvements, judgements, fines or penalties which are triggered by SGAC's changes to the Premises, which shall be SGAC's responsibility.
- e. City shall have no liability to SGAC for any losses with respect to SGAC's personal property and any alterations, improvements, additions or fixtures that are installed in the Premises by SGAC, including losses that may be caused by the condition of the Premises or City's election not to undertake repairs or replacements to remedy any condition of the Premises.

**15. INDEMNITY AND HOLD HARMLESS**

SGAC shall defend, indemnify and hold harmless City and its officers, employees and agents from and against any and all claims, causes of action, suits, liabilities,

losses, judgements, penalties and damages (including costs and expenses incurred in connection therewith, including attorney's fees incurred by City, whether for outside counsel or the City Attorney) for death or injury to persons or for loss of or damage to Premises (collectively "Liabilities") caused by SGAC, its agents, servants, employees, or invitees in connection with their use and occupancy of the Premises, to the extent not caused by City or City's employees' sole negligence or willful misconduct. City shall indemnify and hold harmless SGAC from Liabilities arising out of or in connection with City's sole negligence and/or intentional act during those periods when City enters and or uses the Premises as provided for in accordance with its rights and obligations under this Agreement.

**16. INSURANCE REQUIREMENTS**

During the term of this Lease, SGAC shall maintain in full force and effect at its sole cost and expense, the insurance coverage specified in Exhibit "C", attached hereto and incorporated herein by reference.

**17. ASSIGNMENT, SUBLET, HYPOTHECATION**

- a. Except as permitted in Section 5(a), SGAC shall not directly or indirectly assign, sublet or hypothecate any interest in the leasehold estate under this Lease. SGAC may contract with third parties, including Member Clubs, for such third parties to undertake some of SGAC's obligations under this Lease, but SGAC shall remain liable for the actions or omissions of such third parties. Any attempt or purported assignment of any right or obligation of SGAC with the intent of releasing SGAC from its obligations to City pursuant to this Lease shall be void and of no effect.
- b. Excepting only a change in SGAC's name, the term "assignment" shall include any change in the form of business entity of SGAC, any merger or consolidation of SGAC from that of a California nonprofit corporation, whether voluntarily or by operation of law, provided; however, that a change of status due only to a change in the California Corporation Code shall not be deemed to be an assignment.
- c. SGAC shall not directly or indirectly use, or permit to be used, the Premises or improvements for security for any debt.

**18. TERMINATION; DEFAULTS AND REMEDIES**

- a. In the event of termination and as long as the Premises is in a condition suitable for continued use, City will make arrangements with SGAC to allow SGAC to rent the Center for its organization meetings and events and City will assume responsibility for management of the use of the Center by Member Clubs and other organizations and special event rentals that had been scheduled prior to receipt of the termination notice, so that planned uses of the Center may continue unimpeded, but subject to issuance of a facility use permit and

payment of the applicable fee as established by City for rental of City buildings.

b. The following rights and remedies shall be available to City in the event SGAC commits any Event of Default, as defined below, during the Term of this Lease. Unless a different time period is set forth elsewhere in this Lease, SGAC shall be deemed to be in default only after receipt of written notice from City specifying the nature of the violation and not having cured said violation within thirty (30) days after receipt of the notice; provided, however, that if the failure cannot reasonably be cured within thirty (30) days, then SGAC shall not be in default under this Lease if SGAC commences to cure the failure within the thirty (30) day period and diligently and in good faith continues to cure the failure thereafter. These rights and remedies shall not be exclusive, but shall be cumulative and in addition to any and all rights and remedies now or hereafter allowed by law. The occurrence of any of the following by SGAC shall constitute an "Event of Default" under this Lease:

- (1) Failure to pay any sum due under this Lease on the date the same first becomes due, if such failure shall continue for more than ten (10) days after written notice from the City to SGAC;
- (2) Failure to perform any other obligation under this Lease;
- (3) Vacating or abandonment of the Premises;
- (4) Knowingly providing material false financial statements, but inadvertent errors shall not be considered a default or material breach under any circumstances; or
- (5) Either the appointment of a receiver to take possession of all or substantially all of the assets of SGAC, a general assignment by SGAC of its assets for the benefit of creditors, or any action taken or suffered by SGAC under any insolvency or bankruptcy act.

c. If SGAC commits an Event of Default, then, after providing notice and an opportunity to cure, as prescribed above, City shall have the right to terminate this Lease upon written notice to SGAC, and SGAC shall immediately surrender possession of the Premises to City. City shall be entitled to recover from SGAC the following damages incurred by City by reason of SGAC's default: (1) the costs of recovering possession of the Premises; (2) expenses for reletting, including necessary renovation and alteration of the Premises only if caused by SGAC's failure to maintain the Premises under Section 9; and (3) reasonable attorneys' fees, whether for outside counsel or the City Attorney. Efforts by City to mitigate the damages caused by SGAC's breach of this Lease shall not waive City's right to recover damages. Nothing in this Section 18 shall affect the right of City to indemnification against liability arising from or related to acts or events occurring prior to the termination of this Lease for personal injuries or property damage, or against mechanic's liens or other liens, claims or expenses.

**19. WARRANTY OF TITLE**

City covenants and represents that it has a fee simple title in the Premises, free and clear of all conditions, covenants, restrictions, mortgages and other liens or defects in title of any nature whatsoever affecting the Premises, or the rights granted SGAC in this Lease. SGAC hereby recognizes the title and interest of City in and to the Premises and agrees never to assail or resist said title or interest therein.

**20. WAIVER**

The waiver by either Party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

**21. SURRENDER**

At the end of the Term of this Lease, except for SGAC's Personal Property and trade fixtures, SGAC shall surrender to City the Premises and all fixtures, furniture and equipment, and any improvements located thereon in condition equal to or better than that existing on the Effective Date, ordinary wear and tear excepted. SGAC's "Personal Property" means and includes the projector, sound system, any property owned by third parties, including Member Clubs, and any new items which do not exist as of the Effective Date if written notice of such items is provided to City after purchase by SGAC. After such surrender, SGAC shall have no right, title or interest in the Premises or improvements located thereon, or any fixtures, furniture or equipment. Should SGAC fail to remove its Personal Property and trade fixtures upon surrender of the Premises, SGAC shall lose all right, title and interest in and to said items and City may elect to keep same upon the Premises or to sell, remove or demolish them without the requirement to reimburse SGAC therefor.

**22. NOTICES**

- a. Except as otherwise stated in this Lease, all notices and demands herein required to be given by City to SGAC or by SGAC to City shall be in writing and delivered in person or by first-class mail and shall be deemed to have been duly given or made upon delivery if hand delivered, three (3) days after deposit with the United States Postal Service as registered or certified mail, postage prepaid, and in each case addressed as designated, below.
- b. Notices and demands delivered to City by mail shall be addressed to it at the following address:

City of Sacramento  
Parks and Recreation  
Department Attn: Director

New City Hall  
915 I Street, 3rd Floor  
Sacramento, CA 95814  
(916) 808-8526

- c. Notices and demands delivered to SGAC by mail shall be addressed to it at the following address:

Sacramento Garden & Arts  
Center Attn: President  
3330 McKinley Blvd  
Sacramento, California 95816  
(916) 808-8800

With a copy to:

Diepenbrock Elkin Gleason LLP  
Attn: Bradley Elkin  
500 Capitol Mall, Suite 2200  
Sacramento, California 95814  
(916) 492-5000

- d. City's Contract Manager is:

Jill Nunes, CPRP  
Recreation Manager  
City of Sacramento  
Department of Parks and Recreation  
Coloma Community Center  
4623 T Street  
Sacramento CA 95819  
(916) 808-6095

**23. AMENDMENT IN WRITING**

No waiver, alteration or modification of this Agreement shall be valid unless made in writing and signed by the Parties.

**24. NO JOINT VENTURE**

By entering this Lease, the Parties have not created a joint venture, partnership or association other than that of landlord and tenant pursuant to this Lease. Except as expressly provided in this Agreement or as the Parties may specify in writing, neither Party shall have authority, express or implied, to act on behalf of the other Party in any capacity whatsoever as an agent.

**25. INDEPENDENT CONTRACTORS**

Each Party may assign volunteers and employees or contract with third parties to perform services for the Premises to meet their respective obligations under this Lease at their exclusive discretion and the services of such assigned volunteers, employees and third parties shall be at the sole expense of that Party. The assigned personnel of each Party shall not be entitled to any benefits payable to employees of the other Party.

**26. BINDING ON SUCCESSORS**

The covenants and conditions contained in this Lease shall, subject to the provisions as to assignment, apply to and bind the successors and assigns of the Parties.

**27. GOVERNING LAW**

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

**28. TIME OF THE ESSENCE**

Time is of the essence in the performance of each Party's obligations under this Lease.

**29. EXCUSABLE DELAYS**

If the performance of any act required by this Lease to be performed by either City or SGAC is prevented or delayed by reason of force majeure, strike, lockout, labor troubles, inability to secure materials or permits, restrictive governmental laws or regulations, or any other cause except financial inability that is not the fault of the Party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay. However, nothing contained in this Section 29 shall excuse the prompt payment owed by SGAC as required by this Lease or the performance of any act rendered difficult solely because of the financial condition of SGAC.

**30. NO OBLIGATIONS TO THIRD PARTIES**

This Agreement is for the sole benefit of the Parties and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement or any term herein. The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties to this Agreement to, any other person or entity including, without limitation, the members of SGAC and the Member Clubs and their members.

**31. ENTIRE AGREEMENT**

The Parties have each carefully reviewed this Lease and have agreed to each term herein. Each Party has actively participated in the drafting, preparation and negotiation of this Lease and no ambiguity shall be presumed to be construed against either Party. This Lease contains all of the terms and conditions as agreed upon by the Parties and supersedes any and all oral or written communications by and between the Parties.

**32. COUNTERPARTS**

This Lease may be executed in one or more counterparts. Facsimile and portable document format (PDF) signatures on this lease shall be binding as if an original.

**33. AUTHORITY**

Each of the signatories to this Lease represents that he/she is authorized to sign the Lease on behalf of such Party and that all approvals, resolutions and consents which must be obtained to bind such Party have been obtained and that no further approvals, acts or consents are required to bind such Party to this Agreement.

**34. HEADINGS**

The headings used herein are for convenience only and shall not be used in interpreting this Agreement.

[signature page follows]

IN WITNESS WHEREOF, City and SGAC have executed this Lease on the date hereinabove first written.

**CITY: CITY OF SACRAMENTO,**  
a municipal corporation

By: \_\_\_\_\_  
Christopher Conlin, Director  
Department of Parks and Recreation  
For: John F. Shirey, City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Senior Deputy City Attorney

ATTEST:

By: \_\_\_\_\_  
Assistant City Clerk

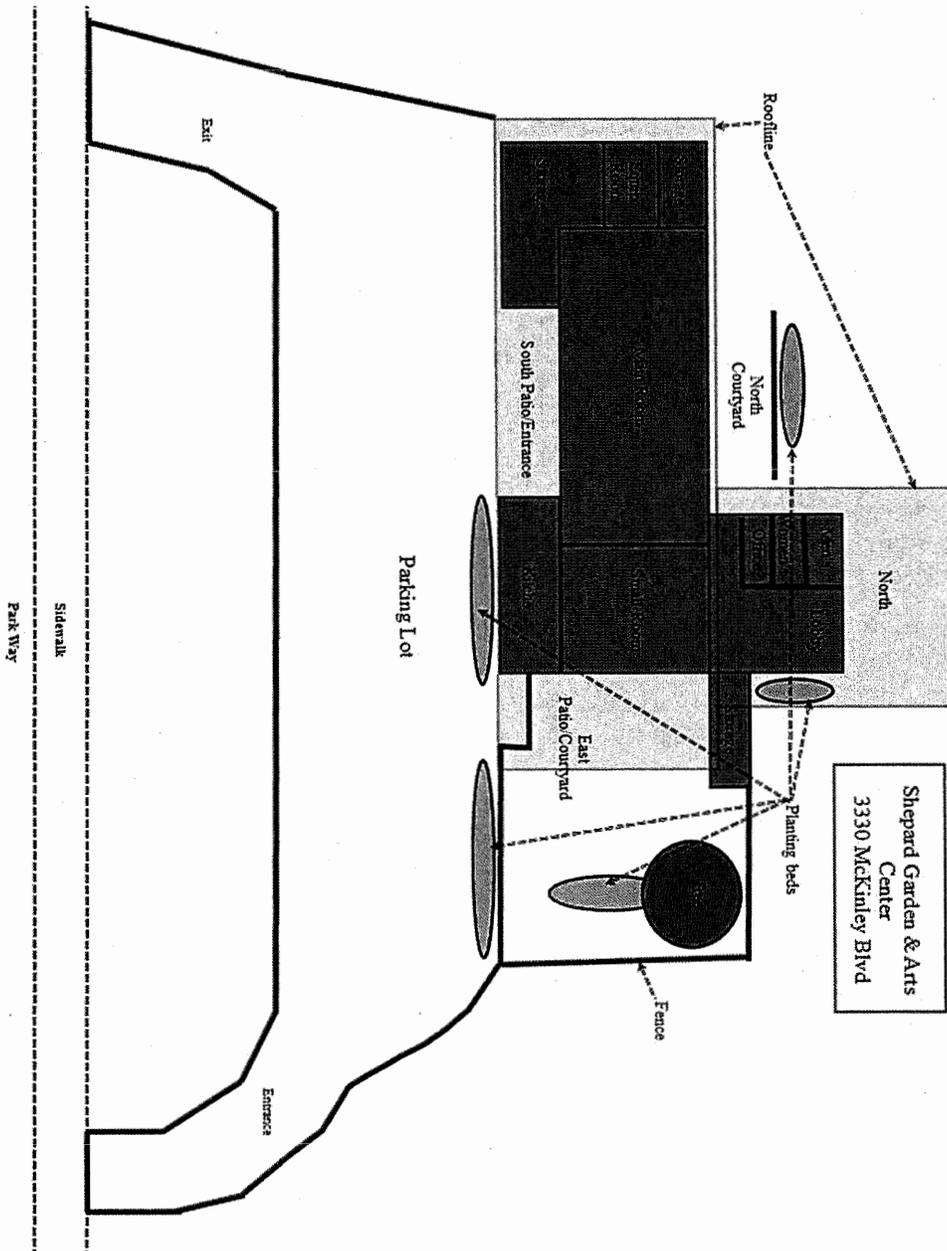
**SGAC: SACRAMENTO GARDEN & ARTS CENTER,**  
a California nonprofit corporation

By:  \_\_\_\_\_  
Name: William K Rothaus  
Title: President

By:  \_\_\_\_\_  
Name: Laurie Lee  
Title: Corresponding Secretary

Attachments:  
Exhibit A: Premises  
Exhibit B: City's Repair Obligations  
Exhibit C: Insurance Requirements

**EXHIBIT A: PREMISES**



## EXHIBIT B: CITY'S REPAIR OBLIGATIONS

1. Repair the ceiling roof leak near the fireplace.
2. Repair the A/C cage dry rot as needed.
3. Replace the exterior wood paneling that has dry rot and to prevent water intrusion as needed and repaint.
4. Repair the beam rot as necessary if the Center building structural condition requires such repairs.
5. Repair perimeter Center exterior lights if needed.

## EXHIBIT C: INSURANCE REQUIREMENTS

During the Term of this Lease, SGAC shall maintain in full force and effect at its own cost and expense the following insurance coverages. By requiring the insurance herein, City does not represent that the coverage and limits will necessarily be adequate to protect SGAC. It is understood and agreed by SGAC that the required insurance coverage and limits shall not be deemed as a limitation on SGAC's liability under the indemnities granted to City in this Lease.

Insurance requirements are subject to review and revision every five (5) years to assure that policy terms, conditions, and limits are maintained in accordance with current insurance industry standards for comparable premises and buildings.

### A. Minimum Scope & Limits of Insurance Coverage

- (1) General Liability Insurance is required providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000). The policy shall include coverage for premises, operations, products and completed operations and contractual liability and liquor liability for the term of the policy. The policy shall include a fire legal liability limit of \$250,000 per occurrence.

Liquor liability insurance shall not be required if SGAC completes the following certification:

"I certify that alcohol will not be served on the Premises under this Lease." \_\_\_\_\_ (SGAC initials)

- (2) Auto Liability Insurance is required providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) combined single limit. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the SGAC.

No automobile liability insurance shall be required if SGAC completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services by SGAC under this Lease." \_\_\_\_\_  
(SGAC initials)

- (3) Workers' Compensation Insurance is required with statutory limits, including a waiver of subrogation in favor of City and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000).

No Workers' Compensation insurance shall be required if SGAC completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance."

\_\_\_\_\_ (SGAC initials)

- (4) All Risk Property Insurance including coverage for special perils is required for all SGAC improvements, fixtures and equipment located on or about the Premises against loss of damage including fire, flood or other acts of nature and vandalism. Tenant improvements, fixtures and other equipment shall be insured for replacement value. The proceeds from any such policy shall be used by the SGAC for replacement of personal property and restoration of SGAC's improvements or alterations, and City shall be named as a loss payee to ensure the insurance proceeds are used for such purposes.

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of SGAC, including products and completed operations of SGAC and premises owned, leased or used by SGAC.
- (2) Automobile Liability Insurance: The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) SGAC's insurance shall be primary as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be in excess of SGAC's insurance and shall not contribute with it.
- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees or volunteers.

- (3) Coverage shall state that SGAC's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) The City will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the foregoing requirements must be declared to and approved by the City Risk Management Division.

E. Verification of Coverage

SGAC shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to City's Contracts Manager. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

- (1) SGAC shall provide initial insurance documents to City's Contracts Manager upon request, prior to execution of the Lease. All future insurance renewal documents shall be sent to:

EBIX BPO  
212 Kent Street  
Portland, MI, 48875  
Phone: (517) 647-1700  
Fax: (517) 647-7900  
Email: CertsOnly@periculum.com

- (2) City may withdraw its offer or cancel this Lease if the certificates of insurance and endorsements required have not been provided prior to execution of this Lease. Failure to provide insurance certificates and endorsements and keep such certificates and endorsements current will be considered a material breach by SGAC of this Lease.

F. Contractors

SGAC shall require and verify that all contractors and subcontractors maintain insurance coverage that meets the minimum scope and limits of insurance coverage specified in subsections A, C and D above.

G. Rentals

SGAC's insurance coverage shall extend to all persons or groups that rent the Premises from SGAC unless SGAC requires its renters to provide evidence of the same insurance coverage as specified in subsection A(1), General Liability Insurance, including an endorsement naming City as an additional insured.