

ITEM 10.F.

MOORPARK CITY COUNCIL AGENDA REPORT

TO: Honorable City Council

From: David C. Moe II, Redevelopment Manager 

Date: August 31, 2011 (City Council Special Meeting of 9/14/11)

Subject: Consider Resolution Approving Lease Agreement Between the City of Moorpark and Moorpark Foundation for the Arts for the Property Located at 33 High Street, Suite 100

BACKGROUND AND DISCUSSION

The Redevelopment Agency of the City of Moorpark ("Agency") acquired 33 High Street ("Property"), for redevelopment purposes. The Property is improved with a two-story commercial building and located within the Moorpark Redevelopment Project Area. The Property has subsequently been transferred to the City of Moorpark ("City").

Prior to transferring the Property to the City, the Agency leased Suite 200 (upstairs unit) of the Property to Robert Sichmeller for a period of three years (expires March 31, 2012) for office use. Suite 100 (lower unit) of the Property is currently being utilized as additional rehearsal and staging space for the High Street Arts Center ("HSAC"), and temporary offices for the newly created Moorpark Foundation for the Arts ("MFA").

MFA is now interested in leasing Suite 100 to formally establish their offices and conduct business. Staff has negotiated a proposed lease agreement with MFA to lease approximately 900 square feet for office use. The monthly rent is \$600.00 and the term of the lease is for two years. MFA has the option to extend this lease up to an additional twelve (12) months.

The City is currently responsible for janitorial, landscaping, and monthly utilities for sewer/water and electricity for the common areas (parking lot, restroom, hallway, and break room) for Suite 200. Under the proposed lease, the City will also be responsible for the same monthly services and utilities, as mentioned above, for Suite 100. Based on past invoices and usage of the Property, staff estimates the City's monthly cost associated with Suite 100 to be \$235.00, of which \$100.00 is for sewer/water and electricity for the common areas (\$50 for water/sewer and \$50 for electric); \$75.00 for outdoor cleaning and janitorial services; and \$60.00 for landscaping and tree trimming. MFA will be responsible for the electricity cost for Suite 100. The HSAC will also have

the right to utilize the parking lot on the Property after 5:00 p.m. for theater purposes.

The proposed lease agreement is not anticipated to produce a net cost to the City. It is projected that the City will annually receive \$7,200.00 in rent revenue.

Staff recommends approving the proposed lease agreement between the City and MFA for the property located at 33 High Street, Suite 100.

FISCAL IMPACT

The City will receive \$7,200.00 in annual rent revenue, less expenses of \$2,820.00.

STAFF RECOMMENDATION

Adopt Resolution No. 2011-_____, approving lease agreement between the City and MFA, subject to final language approval by the City Manager and City Attorney.

Attachment: Resolution No. 2011 - _____

ATTACHMENT 1

RESOLUTION NO. 2011-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, APPROVING LEASE AGREEMENT BETWEEN THE CITY OF MOORPARK AND MOORPARK FOUNDATION FOR THE ARTS FOR THE PROPERTY LOCATED AT 33 HIGH STREET, SUITE 100

WHEREAS, the Redevelopment Agency of the City of Moorpark ("Agency") purchased the property located at 33 High Street ("Property") with tax increment funds; and

WHEREAS, the Agency transferred the Property to the City of Moorpark ("City"); and

WHEREAS, The City desires to lease suite 100 ("Unit") of the Property to the Moorpark Foundation for the Arts for office purposes; and

WHEREAS, The City and the Moorpark Foundation for the Arts have negotiated a two year lease agreement (Attachment A); and

WHEREAS, Section 37395 of the Health and Safety Code requires the City to declare there is no current municipal need of the Unit; and

WHEREAS, The City declares that there is no current municipal need for the Unit; and

WHEREAS, the proposed leasing of the Unit will produce an additional revenue stream for the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council approves the leasing of the Unit subject to final language approval by the City Manager and City Attorney.

SECTION 2. The City Council determines that there is no current municipal need for the Property.

SECTION 3. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED AND ADOPTED this 14th day of September, 2011.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk

Exhibit: Lease Agreement

EXHIBIT A

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter "Lease") is made and entered into as of this _____ day of _____, 2011, by and between the City of Moorpark, a municipal corporation, (hereinafter the "City"), the Lessor, and the Moorpark Foundation for the Arts, a California non-profit under the IRS code 501 (c) 3, (hereinafter the "Tenant").

THE PARTIES AGREE THAT:

SECTION 1. PROPERTY LEASED

City, in consideration of the rents herein agreed to be paid and of the indemnifications, covenants, and agreements agreed to herein, hereby leases to Tenant, and Tenant hereby leases from the City, that certain real property known as Suite 100, 33 High Street, Moorpark, California, (hereinafter referred to as the "Premises"). The building located on 33 High Street is a two story office building consisting of approximately 2,000 square feet. The building consists of two suites. Suite 100 is approximately 900 square feet and located on the ground floor.

As part of this Lease, Tenant shall have access to common areas, which include a second floor break room; first floor restrooms (men's and women's); easement to rear of building; rear of building; and parking lot (hereinafter referred to as the "Common Area").

Tenant acknowledges the fact that some or all of the Common Area is shared with the tenant of the office space on the second floor and the adjacent High Street Arts Center. The High Street Arts Center has access to the Common Area, however may only have access to the parking lot from 5:00 p.m. – 5:00 a.m.

SECTION 2. TERM

The term of this Lease shall commence on the 1st day of October 2011, and all terms and conditions of the Lease shall continue for a two (2) year term to the 30th day of September, 2013.

City's obligations hereunder shall be contingent upon Tenant's payment in full of any obligations described in Section 5 below, and Tenant's complying with all other provisions set forth herein.

SECTION 3. OPTION TO EXTEND

Tenant has the option to extend this Lease up to an additional twelve (12) months. Tenant shall notify City in writing no later than sixty (60) days prior to the end of the term of this Lease.

Tenant shall be subject to all of the terms, covenants, and conditions of this Lease, including the obligation to pay rent during extended period, at the prevailing rate specified in Section 5, hereof, or as may be adjusted pursuant to the Lease.

SECTION 4. HOLDING OVER

It is further agreed that if Tenant shall retain possession of the Premises beyond the original term of this Lease or any extension thereof, without the express written consent of the City, Tenant shall continue to be Tenant from month-to-month during such hold-over period.

Tenant shall be subject to all of the terms, covenants, and conditions of this Lease, including the obligation to pay rent during any such hold-over period, at the rate specified in Section 5 plus ten percent (10%), hereof, or as may be adjusted pursuant to the Lease.

SECTION 5. RENT

Tenant shall pay City, without abatement, deduction, or offset, rent in the amount of six hundred dollars (\$600.00) per month ("Monthly Rent") payable in advance on or before the first day of each month.

Tenant shall be liable for Monthly Rent. A late rent charge equal to ten percent (10%) of the Monthly Rent shall be added to any payment of rent received five (5) days or more after the due date for rent payment stated herein or when a deficient check has been given for rent payment. The late rent charge shall continue at ten percent (10%) for each month thereafter that the late payment has not been paid.

Tenant will pay the City six hundred dollars (\$600.00), as a security deposit. This security deposit shall not be considered as payment for rent for any month, including the last month of tenancy.

If the Tenant exercises its option to extend the term of this Lease, the City may increase the Monthly Rent. The City and the Tenant shall each obtain comparable rental rates from a real estate broker and negotiate in good faith to agree upon a monthly rental amount for the extended period. If the City and Tenant cannot agree on the monthly rental amount, the City and Tenant agree to select a third party real estate broker to determine the monthly rental amount. Any cost or fee associated with the third party real estate broker shall be split equally between the City and Tenant.

SECTION 6. INDEMNIFICATION AND HOLD HARMLESS

Tenant shall indemnify, defend with legal counsel approved by City and hold harmless City and its officers, employees, servants and agents from and against any and all claims, actions, liabilities, losses, damages, costs, attorneys' fees, and other expense of any nature for loss or damage to property, or injury to or

death of persons, arising in any manner whatsoever, directly or indirectly, by reason of this Lease or the use or occupancy of the Premises by Tenant, vendors, invitees, whether any such claim be made during tenancy or thereafter, except such loss, damage, injury, or death caused by the sole negligence of City or any of its officers, employees, servants, or agents.

SECTION 7. NOTICE OF NON-ELIGIBILITY FOR RELOCATION BENEFITS

Please read this notification carefully prior to signing this agreement and moving into the property. The Redevelopment Agency of the City of Moorpark ("Agency") acquired the property located at 33 High Street for redevelopment purposes and subsequently transferred it to the City. As a post acquisition tenant, you will not be eligible for relocation benefits under the federal and state law. This notice is to inform you of the following information **before you enter into any lease agreement and occupy a unit at the above address:**

1. You may be displaced at the end of lease term.
2. You may be subject to a rent increase upon lease renewal or option to extend the lease term.
3. You will not be entitled to any relocation benefits.

If you have to move or your rent is increased, you will not be reimbursed for any such rent increase or for any costs or expenses incurred by you in connection with a move. Should state law change, Tenant agrees to waive any and all claims for relocation benefits.

SECTION 8. USE

Tenant shall use the Premises for Foundation and Arts Center purposes only. The Premises shall not be used for any other purpose, except with the prior written consent of the City Manager of the City of Moorpark, which consent Tenant agrees may be withheld by the City Manager at his/her sole and absolute discretion.

SECTION 9. UTILITIES

Tenant agrees to pay all monthly service charges for electric current and any other utilities which may be furnished to or used upon the Premises by Tenant during this Lease. It is further agreed that in the event Tenant shall fail to pay the above mentioned charges when due, City shall have the right to pay the same on demand, together with any interest thereon and any other fees that may be owed. The City shall be reimbursed by Tenant within five (5) days of notice from City for the amount of payment plus any interest or fees, with an additional fifteen percent (15%) administrative fee. Failure to pay monthly service charges for any above-mentioned utility in a timely fashion shall be cause for termination of this Lease.

City agrees to pay all monthly service charges for sewer, water, (including water for all landscaping on the premises), and electricity for the common areas (parking lot, restroom, and break room).

SECTION 10. TAXES, ASSESSMENTS, AND LIENS

Tenant shall pay directly to the tax collector, when due, all taxes and assessments which may be levied against Tenant's possessory interest in the Premises and upon all improvements and personal property which are located on the Premises. Within five (5) days after the date when any tax or assessment would become delinquent, Tenant shall serve upon City receipts or other appropriate evidence establishing the payment.

Tenant shall keep the Premises and improvements free from all liens and encumbrances by reason of the use or occupancy of the Premises by Tenant. If any liens or encumbrances are filed thereon, Tenant shall remove the same at their own cost and expense and shall pay any judgment and penalties which may be entered thereon. Should Tenant fail, neglect, or refuse to do so, City shall have the rights to pay any amount required to release any lien or encumbrance, or to defend any action brought thereon, and to pay any judgment or penalty, and Tenant shall be liable to City for all costs, damages, and attorneys' fees, and any amounts expended in defending any proceedings, or in the payment of any lien, encumbrance, judgment, or penalty. City may post and maintain upon the Premises notices of non responsibility as provided by laws. Upon demand by City, Tenant shall post the bond contemplated by Civil Code Section 3143.

SECTION 11. INSTALLATION BY TENANT

Tenant shall not make any alterations, additions, or improvements upon the Premises without the prior written consent of the City Manager. Any alterations, additions, or improvements installed or caused to be installed to the building or site, or any fencing, floor covering, interior or exterior lighting, plumbing fixtures, shades or awnings, or any other improvements on the Premises (collectively "Installations") shall be solely at Tenant's cost and is not reimbursable by the City at any time, including at the time of termination of the Lease by either the Tenant or City. All alterations, additions, and improvements shall be done in a good and workmanlike manner and diligently prosecuted to completion, and shall be performed and maintained in strict accord with all federal, state, county, and local laws, ordinances, codes, standards, and requirements relating thereto. Unless otherwise expressly agreed to by the City, any alterations, additions, and improvements shall remain on and be surrendered with the Premises upon the expiration or termination of this Lease. Tenant agrees to and shall indemnify, defend with legal counsel approved by City and hold harmless City and its officers, employees, servants and agents from and against all liability, loss, damage, costs, attorneys' fees, and other expenses of any nature resulting from any Tenant alterations, additions, or improvements to the Premises.

SECTION 12. REMEDIES

In case of the failure or refusal of Tenant to comply with and perform each and all of the terms and covenants on their part herein contained, this Lease and all rights hereby given shall, at the option of the City, cease and terminate, and the City shall have the right forthwith to remove Tenant's personal property from the Premises at the sole cost, expense, and risk of Tenant, which cost and expense Tenant agrees to pay to City upon demand, together with interest thereon at the maximum rate allowed by law from the date of expenditure by City. Such action shall be proceeded by thirty (30) day written notice.

SECTION 13. MAINTENANCE

Tenant has examined the premises and accepts the same as being clean, in good order, condition, and repair with the exceptions of items specifically stated in this Section. Throughout the term of this Lease Tenant shall, at Tenant's sole cost and expense, maintain the Premises and all improvements thereon in good order, condition, and repair and in accordance with all applicable statutes, ordinances, rules, and regulations. The sole exceptions to this condition are the Common Area (janitorial of restrooms and break room periodic service). Building, (all mechanical, structural, roof, and plumbing systems), irrigation system, landscaping (tree trimming), water systems (potable and waste), and the air conditioning and heating system, which will be maintained by the City. Tenant shall immediately report any problems to the David C. Moe II, (805) 517-6217. City shall not be obligated to repair or maintain the Premises or improvements in any manner throughout the term of the Lease, except as stated above. However, City may elect to perform any obligation of Tenant pursuant to this Section due to Tenant's failure or refusal to do so and at Tenant's waiver of any rights or remedy for Tenant's default.

Tenant shall reimburse City for the cost and expense they incurred in the performance of Tenant's obligation within fifteen (15) days of City's request for payment, plus any interest or fees, with an additional fifteen percent (15%) administrative fee. Should City perform any of the foregoing, such services shall be at the sole discretion of City, and the performance of such services shall not be construed as an obligation or warranty by City of the future or ongoing performance of such services. Failure to maintain Premises as outlined herein shall be considered grounds for termination of this Lease.

Tenant shall also indemnify, defend with legal counsel approved by City, and hold harmless City and its officers, employees, servants, and agents from and against all claims, actions, liabilities, losses, damages, costs, attorneys' fees, and other expenses of any nature for loss or damage to property, or injury to or death of persons, arising in any manner whatsoever, directly or indirectly, from Tenant's performance pursuant to this Section. The indemnification, legal defense and hold harmless provisions of this Lease shall survive the termination of the tenancy.

SECTION 14. PESTICIDES AND HERBICIDES

Tenant shall use pesticides and herbicides on the Premises only in strict accordance with all applicable statutes, ordinances, rules and regulations. Such pesticides and herbicides shall be limited to those that are permitted for residential housing units.

SECTION 15. HAZARDOUS MATERIALS INDEMNITY

As used in this Section, Hazardous Materials means any substance, product, waste, or other material of any nature whatsoever which is or becomes listed, regulated or addressed pursuant to: (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C., Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C., Section 6901, et seq.; the Substances Control Act, 15 U.S.C., Section 2601, et seq.; the Clean Water Act, 33 U.S.C. Section 1251, et seq.; the California Hazardous Waste Control Act, Health and Safety Code Section 25100, et seq.; the California Hazardous Substance Account Act, Health and Safety Code Section 25330, et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Section 25249.5 et seq.; California Health and Safety Code Section 25280, et seq. (Underground Storage of Hazardous Substances); the California Hazardous Waste Management Act, Health and Safety Code Section 25170.1, et seq.; California Health and Safety Code Section 25501, et seq.; (Hazardous Materials Response Plans and Inventory); or the Porter-Cologne Water Quality Control Act, Water Code Section 13000, et seq. all as amended, (2) any other federal or state law or any local law regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance or material, as now is, or at any time hereafter may be, in effect, and (3) any rule or regulation adopted or promulgated under or pursuant to any of said laws.

If Tenant receives any notice, whether oral or written, of any inquiry, test, investigation, enforcement proceeding, environmental audit, or the like regarding any Hazardous Material on the Premises, Tenant shall immediately serve City with a copy of such notice.

In no case shall Tenant cause or allow the deposit or disposal of any such substance on the Premises. However, household products necessary for routine cleaning and maintenance of the Premises may be kept on the Premises in quantities reasonable for current needs.

The provisions of this Section shall survive the termination of the tenancy and shall relate back to all periods of Tenant's possession of the Premises. The provisions of this Section are intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9707(e), and California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify City from any liability pursuant to such law.

SECTION 16. NO WARRANTIES BY CITY

Except as contained in Section 11, the Premises are accepted by Tenant in an "as is" condition and without any representation or warranty by City as to the condition of the Premises or as to fitness of the Premises for Tenant's use.

SECTION 17. CASUALTY INSURANCE

City shall not be obligated to keep the Premises and the improvements thereon insured against any insurable risk; nor shall City insure Tenant for any personal injury or property damage. Tenant hereby and forever waives all right to claim or recover damages from City in any amount as the result of any damage to the Premises or any improvement thereon or as a result of any injury to any person upon the Premises.

SECTION 18. INSURANCE

Tenant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit A attached to and part of this Agreement. ***The policy shall name Tenant as the insured and the City of Moorpark as additional insured.***

SECTION 19. GOVERNING LAW

Tenant agrees that in the exercise of their rights under this Lease, Tenant shall comply with all applicable federal, state, county, and local laws and regulations in connection with its use of the Premises. The existence, validity, construction, operation, and effect of this Lease and all of its terms and provisions shall be determined in accordance with the laws of the state of California.

SECTION 20. ENTRY BY CITY

During the tenancy, City may enter the Premises upon not less than twenty-four (24) hours advance notice and Tenant shall make the Premises available during normal business hours to the City's authorized agent or representative for the purpose of; (1) to show the premises to prospective or actual purchasers, mortgagee, tenants, workmen, or contractors, (2) to make necessary or agreed repairs, decorations, alterations, or improvements, and (3) at all reasonable times to examine the condition thereof, including its environmental condition. In an emergency, City's agent or authorized representative may enter the premises at any time without securing prior permission from Tenant.

SECTION 21. ASSIGNMENT AND SUBLETTING

No portion of the Premises or of Tenant's interest in this Lease shall be transferred by way of sublease, assignment, or other voluntary or involuntary transfer or encumbrance, without the prior written consent of the City Manager, which consent may be reasonably withheld by the City Manager at his sole and

absolute discretion. Tenant shall pay City the sum of one hundred dollars (\$100.00) to enable City to investigate the qualifications of a proposed assignee and the sum of one hundred dollars (\$100.00) to investigate the qualifications of a proposed sublessee, occupant, or user; City shall not be required to account for the use of said sum paid.

A consent to one transfer shall not be deemed to be a consent to any subsequent transfer. Any transfer without consent shall be void, and shall, at the option of the City, terminate this Lease.

SECTION 22. DEFAULT OR BREACH

Except as otherwise provided, at any time one party to this Lease is in default or breach in the performance of any of the terms and conditions of this Lease, the other party shall give written notice to remedy such default or breach. If the default or breach is remedied within thirty (30) days following such notice, then this Lease shall continue in full force and effect. If such default or breach is not remedied within thirty (30) days following such notice or if the nature of the default is such that it cannot reasonably be cured within thirty (30) days, if Tenant fail to commence to cure within the thirty (30) day period, the other party may, at its option, terminate this Lease. Such termination shall not be considered a waiver of damages or other remedies available to either party because of such default or breach. Each term and condition of this Lease shall be deemed to be both a covenant and a condition.

SECTION 23. INSOLVENCY OR BANKRUPTCY

If Tenant shall be adjudged bankrupt or insolvent, this Lease shall thereupon immediately terminate and the same shall not be assignable by any process of law, or be treated as an asset of the Tenant under such adjudication, nor shall it pass under the control of any trustee or assignee by virtue of any process in bankruptcy or insolvency, or by execution or assignment for the benefit of creditors. If any such event occurs, this Lease shall immediately become null and void and of no effect, and City may thereupon repossess said Premises and all rights of the Tenant thereupon shall cease and terminate.

SECTION 24. DISPOSSESSION

In the event Tenant is lawfully deprived of the possession of the Premises or any part thereof, at any time during the tenancy, by anyone other than City, they shall notify City in writing, setting forth in full the circumstances in relation thereto. Upon receipt of said notice, City may, at its option, either install Tenant in possession of the Premises or terminate the tenancy and refund to Tenant the pro rata amount of any pre-paid rent. No claim for damages or whatsoever kind or character incurred by Tenant by reason of such dispossession shall be chargeable against City.

SECTION 25. CONDEMNATION

If the whole of the Premises should be taken by a public authority under the

power of eminent domain, then the term of this Lease shall cease on the day of possession by the public authority. If only a part of the Premises should be taken under eminent domain, Tenant shall have the right to either terminate this Lease or to continue in possession of the remainder of the Premises. If Tenant remain in possession, all of the terms hereof shall continue in effect, the rental payable being reduced proportionately for the balance of the Lease term. If a taking under the power of eminent domain occurs, those payments attributable to the leasehold interest of the Tenant shall belong to the Tenant, and those payments attributable to the reversionary interest of the City shall belong to the City.

SECTION 26. WAIVER

A waiver by either party of any default or breach by the other party of any provision of this Lease shall not constitute or be deemed to be a waiver of any subsequent or other default or breach. No waiver shall be binding, unless executed in writing by the party making the waiver. No waiver, benefit, privilege, or service voluntarily given or performed by either party shall give the other party any contractual right by custom, estoppel, or otherwise. The subsequent acceptance of rent pursuant to the Lease shall not constitute a waiver of any preceding default or breach by Tenant other than default in the payment of the particular rental payment so accepted, regardless of City's knowledge of the preceding default or breach at the time of accepting the rent; nor shall acceptance of rent or any other payment after termination of the tenancy constitute a reinstatement, extension, or renewal of the Lease or revocation of any notice or other act by City.

SECTION 27. ACQUIESCENCE

No acquiescence, failure, or neglect of any party hereto to insist on strict performance of any or all of the terms hereof in one instance shall be considered or constitute a waiver of the rights to insist upon strict performance of the terms hereof in any subsequent instance.

SECTION 28. PARTIES BOUND AND BENEFITTED

The covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

SECTION 29. CONDITION UPON TERMINATION

Upon termination of the tenancy, Tenant shall surrender the Premises to City including all improvements, clean and in good condition, except for ordinary wear and tear which Tenant was otherwise obligated to remedy under Section 12 above. Any installation which Tenant installs during occupancy with in accordance with Section 11 of this Lease, and has not removed at the termination of the Lease, shall become the possession of the City. Tenant shall repair at Tenant's expense, any damage to the Premises caused by the removal of any improvement made by Tenant from such installation. Any installations, improvements, or additions to the Premises prior to the execution of this Lease

shall be deemed as part of the Premises and shall be the possession of the City.

SECTION 30. TENANT'S FAILURE TO REMOVE PERSONAL PROPERTY

Upon termination of the tenancy, City may reenter and retake possession of the Premises and store Tenant's personal property for a thirty (30) day period at Tenant's cost and expense. If Tenant fails to pick up said personal property and pay said cost and expenses during said thirty (30) day period, City may dispose of any or all of such personal property in any manner that City, in its sole and absolute discretion, deems appropriate.

If any of Tenant's personal property remains on the Premises after the termination of the tenancy, City may use, dispose of, or sell any of said property, in its sole and absolute discretion, without compensating Tenant for the same and without the City having any liability whatsoever therefore.

SECTION 31. NO RECORDATION

Neither this Lease Agreement nor a memorandum thereof shall be recorded by Tenant.

SECTION 32. ATTORNEYS' FEES

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of, any right or obligation pursuant to, this Lease or as a result of any alleged breach of any provision of this Lease, or for an unlawful detainer action, the prevailing party shall be entitled to recover its costs and expenses, including attorneys' fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

SECTION 33. NOTICES AND PAYMENTS

All notices required under this Lease, including notices of change of address, shall be in writing, and all notices and payments shall be addressed as follows:

City: City of Moorpark
799 Moorpark Avenue
Moorpark, California 93021
Attn: City Manager

Tenant: Moorpark Foundation for the Arts
33 High Street
Suite 100
Moorpark, California 93021
Attn: President

Either party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one specified above. Except as otherwise provided by statute, notice shall be deemed served and received

upon receipt by personal delivery or upon the second (2nd) day after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid.

SECTION 34. PARTIAL INVALIDITY

If any provision of this Lease is found by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Lease shall nonetheless remain in full force and effect to the full extent allowed by law.

SECTION 35. GENDER AND NUMBER

For the purpose of this Lease wherever the masculine or neuter form is used, the same shall include the masculine or feminine, and the singular number shall include the plural and the plural number shall include the singular, wherever the context so requires.

SECTION 36. SECTION HEADINGS

Section headings in this Lease are for convenience only, and they are not intended to be used in interpreting or construing the terms, covenants and conditions of this Lease.

SECTION 37. INTEGRATION AND MODIFICATION

This Lease constitutes the entire agreement of the parties concerning the subject matter hereof and all prior agreements and understandings, oral or written, are hereby merged herein. This Lease may not be modified or amended except; (1) in a writing signed by all of the parties hereto; or (2) upon expiration of thirty (30) days service in accordance with Civil Code Section 1946, or any successor statute in effect on the date the written notice is served, by City on Tenant of a written notice setting forth the modification or amendment.

The parties agree that no estoppel argument can be raised during legal proceedings in order to avoid the provisions of this Section.

SECTION 38. INTERPRETATION

Should interpretation of this Lease, or any portion thereof, be necessary, it is deemed that the Lease was prepared by the parties jointly and equally, and the Lease shall not be interpreted against either party on the ground that the party prepared it or caused it to be prepared.

SECTION 39. VENUE

This Lease is made, entered into, and executed in Ventura County, California, and any action filed in any court for the interpretation, enforcement or other action arising from any term, covenant or condition herein shall be filed in the applicable court in Ventura County, California.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their duly authorized representatives as of the date first written above.

CITY OF MOORPARK

MOORPARK FOUNDATION FOR THE ARTS

By: _____
Steven Kueny, City Manager

By: _____
Stuart Cooper, President

ATTEST:

By: _____
Maureen Benson, City Clerk

Exhibit A – Insurance Requirements

EXHIBIT A

Insurance Requirements

Tenant will maintain insurance in conformance with the requirements set forth below. Tenant will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Tenant agrees to amend, supplement or endorse the existing coverage to do so. Tenant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to CITY in excess of the limits and coverage required in this agreement and which is applicable to a given loss, will be available to CITY.

Tenant shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence and \$2,000,000 in aggregate.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident and \$2,000,000 in aggregate. If Tenant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Tenant or Tenant's employees will use personal autos in any way on this project, Tenant shall provide evidence of personal auto liability coverage for each such person.

Worker's Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.

General conditions pertaining to provision of insurance coverage by Tenant. Tenant and CITY agree to the following with respect to insurance provided by Tenant:

1. Tenant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds CITY, its officials, employees, servants, agents, and independent consultants ("Agency indemnities"), using standard ISO endorsement No. CG 2011 with an edition prior to 1996. Tenant also agrees to require all contractors and subcontractors working on the Premise to do likewise.

2. No liability insurance coverage provided to comply with this Agreement shall prohibit Tenant, or Tenant's agents, from waiving the right of subrogation prior to a loss. Tenant agrees to waive subrogation rights against CITY regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractor's to do likewise.
3. All insurance coverage and limits provided by Tenant and available or applicable to this agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the CITY or its operations limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to CITY and approved of in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or any contractor or subcontractor.
6. All coverage types and limits required are subject to approval, modification, and additional requirements by the CITY, as the need arises. Tenant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect CITY'S protection without CITY'S prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Tenant's general liability policy, shall be delivered to CITY at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, CITY has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by CITY shall be charged to and promptly paid by Tenant or deducted from sums due Tenant, at CITY's option.
8. Certificates are to reflect that the insurer will provide thirty (30) day notice to CITY of any cancellation of coverage. Tenant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

9. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Tenant, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to CITY.
10. Tenant agrees to ensure that subcontractors, and any other party entering onto the Premises, provide the same minimum insurance coverage required of Tenant. Tenant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Tenant agrees that upon request, all agreements with subcontractors and other parties entering onto the Premises will be submitted to CITY for review.
11. Tenant agrees not to self-insure or to use any self-insured retention or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, or other entity or person entering onto the Premises to self-insure its obligations to CITY. If Tenant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the CITY. At that time the CITY shall review options with the Tenant, which may include reduction or elimination of the deductible of self-insured retention, substitution of other coverage, or other solutions.
12. For purposes of applying insurance coverage, only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
13. Tenant acknowledges and agrees that any actual or alleged failure on the part of the CITY to inform Tenant of non-compliance with any insurance requirement in no way imposes any additional obligations on CITY nor does it waive any rights hereunder in this or any other regard.
14. Tenant will renew the required coverage annually as long as CITY, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled or terminated for any reason. Termination of this obligation is not effective until CITY executes a written statement to that effect.
15. Tenant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Tenant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement is required in these

specifications applicable to the renewing or new coverage must be provided to CITY within five days of the expiration of the coverages.

16. The provisions of any workers' compensation or similar act will not limit the obligations of Tenant under this agreement. Tenant expressly agrees not to use any statutory immunity defenses under such laws with respect to CITY, its employees, officials, and agents.
17. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party of insured to be limiting or all-inclusive.
18. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.
19. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.
20. Tenant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge CITY or Tenant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the CITY. It is not the intent of CITY to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against CITY for payment of premiums or other amounts with respect thereto.
21. Tenant agrees to provide immediate notice to CITY of any claim or loss against Tenant arising out of the lease of the Premises. CITY assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve CITY.