



## **CITY COUNCIL AGENDA REPORT**

**Meeting Date:** May 1, 2025

**From:** Jeremy Dennis, City Manager

**Subject:** Silverspot Cooperative Nursery School

### **Recommendation**

Staff recommend that the City Council:

1. Receive an update from Silverspot Cooperative Nursery School (Silverspot), and;
2. Discuss a new lease between the City and Silverspot

### **Background**

Silverspot Cooperative Nursery School is a Non-profit 501(c)(3) organization established in 2002. Silverspot Cooperative Nursery School is a parent-run, non-profit co-operative nursery school, working to create a community of encouragement and learning for families. The goal at Silverspot is to provide a safe and secure environment in which children learn through play to develop their social and language skills. The school is an active member of California Council of Parent Participation Nursery Schools and enrolls children between the ages of 2 years and 5 years 11 months.

The City has leased property at 4 Solano Street to Silverspot since 2003:

1. March 10, 2003 – May 21, 2005 (Original Lease)
2. June 1, 2005 – May 31, 2007
3. June 1, 2007 – May 31, 2012
4. June 1, 2012 – May 31, 2017
5. June 1, 2017 – May 31- 2019 (Tenant has been on month-to-month since July 1, 2019)

Hundreds of children, the majority of whom were/are Brisbane residents, have benefited from the early education opportunities provided by Silverspot.

Last year, Silverspot met with then-Councilmembers Lentz and Mackin to discuss a one-time city contribution of \$35,000 to Silverspot to support the school during a low period of enrollment and other challenges.

As the lease expired in 2019, City staff and Silverspot representatives have been meeting recently to develop a new lease (Attachment 1).

## Discussion

Staff request that the Council:

1. Receive an update from Silverspot on their current status and future plans; and
2. Discuss the draft lease

### Lease Discussion

Typically, staff would attach a red-lined version of the lease, but many small editing and other non-substantive changes were addressed that makes tracking the changes challenging. Below are the highlights of the suggested changes to the draft lease:

Article 2: Silverspot is requesting a lease extension for 5 years.

Article 3: The monthly base rent of \$310 has remained unchanged since the original lease and is waived if Silverspot designates an equivalent amount towards community benefit. Historically, they have done so by offering tuition assistance to families in need.

Article 4: The minimum age served in the program has been lowered from 2 years 6 months to 2 years.

The original lease established the minimum enrollment expectation of 20 children. Silverspot requested a reduction to 15 children given the ebbs & flows of enrollment in recent years but doing so requires Council consideration so this draft lease has left the minimum enrollment number at 20.

Article 8: Added 8.03: Landlord shall perform maintenance of the landscape in the playground area at least twice per month. Landlord shall perform maintenance of the landscape in the front yard of the Property at least twice per month. *(This reflects current practice)*

## Fiscal Impact

Per the draft lease, the City will receive \$310/month.

## Attachment

### 1. 2025 Draft Lease Agreement



Jeremy Dennis, City Manager

## LEASE AGREEMENT

**THIS LEASE AGREEMENT**, ("Lease") effective as of **DATE**, between THE CITY OF BRISBANE, a municipal corporation ("Landlord") and SILVERSPOT NURSERY SCHOOL, a California nonprofit corporation ("Tenant"). Landlord and Tenant are sometimes referred to in this Lease jointly as the "Parties" and individually as a "Party."

### RECITALS

- A. Landlord is the owner of the real property and improvements thereon located at 4 Solano Street, in the City of Brisbane, County of San Mateo, State of California, as more particularly shown in the drawing attached hereto as Exhibit "A" and incorporated herein by reference ("the Property").
- B. Landlord and Tenant have been in a landlord and tenant relationship as to the Property since March 2003; since June 1, 2019, the tenancy has been on a month to month basis.
- C. Tenant has requested Landlord to enter into this Lease and Landlord is willing to enter into this Lease on the terms and conditions set forth herein.

NOW, THEREFORE, for the consideration set forth herein, Landlord and Tenant agree as follows:

### ARTICLE 1 PROPERTY AND COMMON AREAS

1.01 Landlord, for and in consideration of the rents, covenants and agreements on the part of the Tenant to be paid, kept and performed, does hereby lease the Property to Tenant and Tenant does hereby rent the Property from Landlord, on the terms of conditions set forth in this Agreement.

1.02 Tenant shall have the non-exclusive right to use the playground area adjacent to the Property, it being understood that such playground area shall at all times remain open and available for use by the general public. Tenant shall also have the non-exclusive right to use the public parking spaces on Solano Street for all of Tenant's off-street parking requirements, subject to any rules and regulations concerning such use as may be adopted by Landlord from time to time, and Tenant shall not be required to provide any parking facilities on the Property. The execution of this Lease by Landlord shall constitute a waiver of any and all off-street parking requirements that might otherwise be applicable to Tenant's use and occupancy of the Property.

### ARTICLE 2 TERM

2.01 The term of this Lease shall be a period of five years, commencing on **DATE** (the "Commencement Date") and ending on **DATE**, unless sooner terminated as provided herein.

2.02 Tenant may request to renew the Lease for an additional term of five years, i.e., from August 1, 2030 until July 31, 2035, (the “Renewal Term”) by giving written notice to Landlord of Tenant’s no earlier than **DATE** and request no later than **DATE**.

2.03 At the written request of Tenant for an extension of the Lease term, which shall be submitted as provided in Section 2.02, City shall conduct a performance review of Tenant's operations on the Property to determine whether such operations have been conducted to the reasonable satisfaction of the City. The factors to be considered for such review shall include, but are not limited to, number of children served, number of Brisbane residents and persons employed in Brisbane utilizing Tenant’s childcare services, hours of operation, compliance by Tenant with the terms and conditions of this Lease, and the nature of complaints, if any, received by Landlord concerning the childcare or other services provided by Tenant at the Property. If the City determines that Tenant's operations have been conducted in a satisfactory manner, the term of this Lease shall be further extended for an additional five years. Thereafter, the Lease shall be renewed for additional one-year terms upon approval of each extension by the City, and a performance review may be conducted if recommended by the City Manager or requested by the City Council.

2.04 Notwithstanding any other provision of this Lease, Tenant may terminate this Lease at any time during the Lease term by giving sixty (60) days prior written notice to Landlord.

### **ARTICLE 3 RENT/WAIVER OF RENT**

3.01 The monthly rent shall be \$310; provided, however, Landlord shall waive the payment of monthly rent (“Monthly Waiver”) if Tenant expends an equivalent amount of the monthly rent in a manner that, in Landlord’s sole discretion, provides a direct benefit to the Brisbane community, such as provided in Section 3.02.

3.02 Landlord approves Tenant's proposed use of the Monthly Waiver toward a Tuition Assistance Program operated by Tenant that will reduce the tuition charged by Tenant to households that require financial assistance to participate in Tenant's childcare program. If the entire Monthly Waiver is not needed for financial assistance as set forth in the previous sentence, Tenant may, with Landlord’s approval, apply any remaining Monthly Waiver toward other uses that will directly benefit the Brisbane community. Tenant shall provide a written annual report to Landlord not later than September 1 describing in reasonable detail the manner in which the Monthly Waiver has been used during the preceding 12 months (but without disclosing the identity of any household receiving financial assistance).

### **ARTICLE 4 USE AND OPERATION OF THE PROPERTY**

4.01 The Property shall be used and occupied by Tenant solely for operation of a cooperative preschool and childcare facility and activities directly related to such use, such as membership and board meetings, consultations with parents, membership community events, and fundraising events. The Property shall not be used for any other or additional purpose without the prior written consent of Landlord. Tenant shall obtain all state and local permits and licenses that

may be required for the conduct of such use and shall keep the same in full force and effect at all times during the term of this Lease. A copy of each permit and license and each extension or renewal thereof shall be provided to Landlord.

4.02 Tenant's use of the Property shall be in accordance with the following requirements:

- (a) Tenant's services shall be available on a year-round basis on Mondays through Fridays (excluding holidays and school closures), between the hours of 8:00 am and 5:00 pm. Tenant's services will not be available for periods of time during the Holiday season generally consistent with periods of time when the Brisbane Elementary School is closed. Tenant shall provide to the Landlord in August an annual schedule showing such closure periods.
- (b) The preschool and childcare programs shall be designed for children between the ages of 2 years, and 5 years, 11 months.
- (c) Except as Landlord, in its sole discretion, agrees, Tenant shall regularly provide services to not less than 20 children. Should the number of children fall below 20, Tenant shall not be considered in default of this requirement if the number is increased to at least 20 children within 120 days. Tenant shall regularly provide services to not more than the maximum number of children allowed under Tenant's childcare license issued by the State of California.
- (d) In the determination as to which households receive services from Tenant, and to the extent it is permissible under the law, preference shall be given to people living or working in Brisbane. The order of priority shall be as follows: first, households whose children have received services from Tenant in past years; second to Brisbane households whose children have not received service from Tenant or who have not received services in past years; third, to persons employed full time or employed at least 20 hours/week in Brisbane; and fourth, all others. Preferences shall apply only when there are openings and when they become available and do not require termination of services to any household or person currently receiving services from Tenant.
- (e) Tenant shall in August provide to Landlord a written annual report showing in the preceding 12 months the number of children enrolled in the program, the ages of the children, place of residence of the children, place of employment of parent(s) of children who are not residents of Brisbane, a general description of the activities conducted, and a summary of Tenant's financial condition.

4.03 Tenant shall not use the Property or permit anything to be done in or about the Property within Tenant's reasonable control which is prohibited by or will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be in force, or which is prohibited by the standard form of fire insurance policy, or will in any way increase the existing rate of any fire or other insurance covering the Property, or cause any change

or cancellation of such insurance. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Landlord and Tenant. Tenant shall not use or allow the Property to be used for any improper, unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Property or commit or suffer to be committed any waste in, on or about the Property.

## **ARTICLE 5**

### **CONDITION OF THE PROPERTY, ALTERATIONS AND IMPROVEMENTS BY TENANT**

5.01 The Property is being rented to Tenant in "AS IS" condition and Landlord shall have no obligation to make any alterations or improvements to the Property for the benefit of Tenant. Tenant acknowledges that Tenant has exclusively occupied the Property since 2003 and Tenant is satisfied with and accepts the present condition of the Property.

5.02 Tenant shall not, without the prior written consent of Landlord (which shall not be unreasonably withheld or delayed), make any alterations, additions or improvements in, on or about the Property, or construct, install or paint any sign on the roof or exterior walls of the Property. As a condition to giving such consent, Landlord may require Tenant to provide Landlord a surety bond or other security satisfactory to Landlord to insure Landlord against mechanics' and materialmen's liens and to insure completion of the work. If any work to be performed by Tenant requires the issuance of a building permit or other form of governmental approval, Tenant shall obtain all such permits and approvals at Tenant's own expense before commencement of the work.

5.03 All alterations and improvements, whether temporary or permanent in character, made by Tenant in, on or about the Property, except removable trade fixtures installed at the expense of Tenant, shall, in the absence of a written request by Landlord for their removal, become the property of Landlord and shall remain upon and be surrendered with the Property at the termination of this Lease by lapse of time or otherwise without compensation to Tenant. To the extent Landlord is able to make a determination at the time the installation work is being done, Landlord shall advise Tenant of any alterations or improvements which Landlord desires be removed from the Property at the termination of this Lease; in all other cases, such determination shall be made by Landlord at the time of termination.

## **ARTICLE 6**

### **UTILITIES AND SERVICES**

6.01 Tenant shall pay, in addition to rent, the cost of the following utility and other services furnished to the Property, electricity, gas, water, sewer, telephone, internet, refuse collection and janitorial service. Whenever possible, Tenant shall establish a separate account with the utility or service provided so that all charges for service are billed directly to Tenant. However, in the event any of such charges are billed to Landlord, Landlord shall submit a statement showing the amount thereof payable by Tenant and Tenant shall pay such amount to Landlord within thirty (30) days after receipt of the statement.

6.02 Landlord shall not be in default hereunder or be liable for any damages directly or indirectly resulting from, nor shall the rent provided herein be abated by reason of Landlord's failure to furnish or delay in furnishing any utilities or services when such failure or delay is caused by accident, breakage, repairs, strikes, lockouts or other labor dispute, or by limitation, curtailment, rationing or restrictions on use of electricity, gas, water or other utility, or any other cause, similar or dissimilar, beyond the reasonable control of Landlord.

## **ARTICLE 7 INDEMNITY AND INSURANCE**

7.01 Tenant hereby waives any and all claims against Landlord for damage to any property or injury to or death of any person in, upon or about the Property, arising at any time and from any cause except to the extent caused by the negligence or willful misconduct of Landlord. Tenant further expressly indemnifies, defends, and holds Landlord harmless from and against any and all claims, demands, causes of action, liabilities, costs or expenses, including reasonable attorney's fees, occasioned by or in any way connected with the condition, use or misuse of the Property, or occasioned by any act or omission of Tenant and Tenant's agents, servants, employees, invitees, subtenants, or other persons who may come upon the Property, for damage to any property or injury to or death of any person except to the extent caused by the negligence or willful misconduct of Landlord. The indemnity obligations of Tenant set forth herein shall survive and continue beyond the term of this Lease.

7.02 Tenant hereby agrees to maintain in full force and effect at all times during the term of this Lease, at Tenant's expense, a policy or policies of comprehensive general liability insurance, insuring against all liability of Tenant and Landlord for bodily injury and property damage arising out of or in connection with Tenant's use and occupancy of the Property and also insuring performance by Tenant of the indemnity provisions set forth in Section 7.01. The amount of such insurance shall be at least \$2,000,000.00, combined single limit. However, the amount of such general liability insurance shall not limit Tenant's liability nor relieve Tenant of any obligations under this Lease. The general liability insurance policy shall name Landlord as an insured party thereunder and shall be endorsed to provide that: (i) the insurance provided thereunder shall be primary with respect to Landlord; and (ii) no cancellation or reduction in coverage will be made without twenty (20) days prior written notice to Landlord. A copy of the policy or a certificate of insurance shall be furnished to Landlord. In addition to the foregoing, Tenant shall be responsible for maintaining its own insurance covering the personal property, trade fixtures and removable leasehold improvements owned by Tenant and located upon the Property. Tenant shall also maintain workers compensation insurance coverage as required by law.

7.03 Landlord and Tenant each hereby waive any and all rights of recovery against the other, or against the agents, employees or representatives of the other, on account of loss or damage to the property of the waiving party to the extent that such loss or damage is insured against under any insurance policies which either Landlord or Tenant may have in force at the time of such loss or damage. Tenant shall, upon obtaining the insurance required hereunder, give notice to the insurance carrier that the foregoing mutual waiver of subrogation is contained in this Lease and Tenant shall cause each insurance policy obtained by Tenant to provide that the insurance company

waives all right of recovery by way of subrogation against either Landlord or Tenant in connection with any damage covered by such policy.

## **ARTICLE 8 REPAIRS AND MAINTENANCE**

8.01 Tenant shall, at all times during the term hereof and at Tenant's own expense, keep and maintain the Property and every part thereof in good condition and repair, including, without limiting the generality of the foregoing, all plumbing, heating, air conditioning, electrical, and lighting fixtures and equipment within the Property, the interior surfaces of walls, ceilings, and floor coverings, the windows, doors, and glass located within the Property, and the exterior landscaping located within the Property. Tenant hereby waives all rights to make repairs at the expense of Landlord or in lieu thereof to vacate the Property as provided by California Civil Code Section 1942 or any other law, statute or ordinance now or hereafter in effect.

8.02 The maintenance obligations of Tenant, as set forth in Section 8.01, shall not include the exterior walls and roof of the Property, any structural repairs, and any necessary replacement of mechanical or electrical systems, and the same shall be performed by Landlord, at Landlord's own expense, but without liability for failure to do so unless first notified by Tenant in writing of the necessity for such maintenance, repair or replacement. It is also understood that the playground area adjacent to the Property is not being leased to Tenant and Tenant has no responsibility for maintenance of such area. However, Tenant shall not allow any dangerous condition to be created in the playground area as a result of Tenant's own use.

## **ARTICLE 9 DAMAGE OR DESTRUCTION**

9.01 If the Property is damaged, by fire or other casualty to the extent of less than fifty percent (50%) of the floor area of the structure, Landlord shall forthwith repair the same, provided such repairs can, in Landlord's opinion, be completed within ninety (90) days. In such event, this Lease shall remain in full force and effect except that if there is damage to the Property and such damage was not the result of negligence or willful misconduct of Tenant or Tenant's employees or invitees, the rent payable by Tenant shall be abated while the repairs are being made by the extent to which the Property is unusable by Tenant in the normal conduct of Tenant's business. If the repairs cannot, in Landlord's opinion, be completed within ninety (90) days, Landlord shall give written notice of such fact to Tenant within thirty (30) days after the date on which the damage occurred and either Landlord or Tenant may, within thirty (30) days after the giving of such notice, terminate this Lease.

9.02 Notwithstanding the provisions of Section 9.01 above, Landlord shall have the option of terminating this Lease in any of the following circumstances:

- (a) Where the damage or destruction arises from a casualty or cause not covered by insurance then in force maintained by Landlord, or if, for any reason, the proceeds



from such insurance are not available or are inadequate to cover the entire cost of the repair.

- (b) Where the repairs cannot be made by reason of any statute, ordinance, rule or regulation of any governmental authority.

9.03 If Landlord is obligated or elects to repair any damage pursuant to this Article, Landlord shall not be required to repair or replace any improvements installed in the Property by Tenant and Tenant shall, at Tenant's own expense, repair and restore Tenant's own improvements.

9.04 In the event of damage or destruction of the Property to the extent of fifty percent (50%) or more of the floor area of the structure, either party may elect to terminate this Lease.

## **ARTICLE 10**

### **ASSIGNMENT AND SUBLETTING**

10.01 Tenant shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, pledge, hypothecate or encumber all or any part of Tenant's interest in this Lease or in the Property or any part thereof, and any attempt to do so shall be wholly void and shall constitute a breach of this Lease.

10.02 Tenant shall not sublet the Property or any portion thereof without Landlord's prior written consent, which Landlord shall be entitled to withhold in Landlord's absolute and sole discretion. Any request by Tenant for Landlord's approval of a proposed subletting shall be in writing and shall include the following information:

- (a) The name and legal composition of the proposed subtenant;
- (b) The terms and provisions of the proposed sublease, including, but not limited to, the amount of rent or other compensation, if any, to be paid by the subtenant; and
- (c) Such financial information as Landlord may reasonably request concerning the proposed subtenant.

10.03 No consent by Landlord to any subletting by Tenant shall relieve Tenant of any obligation to be performed by Tenant under this Lease, whether occurring before or after such consent or subletting, including the obligation to indemnify Landlord in accordance with Section 7.01 of this Lease. The consent by Landlord to any subletting shall not relieve Tenant from the obligation to obtain Landlord's express written consent to any other subletting. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provisions of this Lease or to be a consent to any subletting. Consent to one subletting shall not be deemed to constitute consent to any subsequent subletting.

## **ARTICLE 11**

### **TRANSFER OF LANDLORD'S INTEREST**

Landlord shall have the right at any time to sell, transfer, assign, pledge, hypothecate or otherwise dispose of Landlord's interest in the Property and in this Lease. In the event of any such sale, transfer, assignment, pledge, hypothecation or other disposition, all obligations of Landlord hereunder shall devolve upon the transferee and Landlord shall be released and discharged from all further obligation or liability hereunder; provided, that Landlord shall be responsible for any funds in the hands of Landlord in which Tenant has an interest until such funds have been delivered to the transferee. Tenant agrees to attorn to the transferee provided all of Landlord's obligations hereunder are assumed by the transferee in writing for the benefit of Tenant.

## **ARTICLE 12 MECHANICS' LIENS**

Tenant shall keep the Property free and clear of all mechanics' liens resulting from any construction work done by or for Tenant. Tenant shall have the right to contest the correctness or validity of any such lien if, immediately on demand by Landlord, Tenant procures and records a lien release bond issued by a corporation authorized to issue surety bonds in California in an amount equal to one and one-half (1-1 / 2) times the amount of the claim of lien or other security satisfactory to Landlord. If used, the bond shall meet the requirements of Section 3143 of the California Civil Code and shall provide for the payment of any sum that the claimant may recover on the claim, together with costs of suit. Should Tenant fail to discharge any such lien or cause the same to be released within sixty (60) days from the date the lien is filed, Landlord may, without inquiring into the validity thereof, cause the same to be discharged and all amounts so expended by Landlord, together with reasonable attorney's fees and expenses, shall be paid by Tenant to Landlord as additional rent hereunder, together with interest thereon at the rate of ten percent (10%) per annum. Tenant shall give ten (10) days prior written notice to Landlord of the date on which any construction work will be commenced so as to afford Landlord the opportunity to post a notice of nonresponsibility.

## **ARTICLE 13 ENTRY BY LANDLORD**

13.01 Landlord and Landlord's authorized representatives shall have the right to enter the Property at reasonable hours and, except for emergencies, upon 24 hour prior notice to Tenant, for any of the following purposes:

- (a) To examine and inspect the Property;
- (b) To supply any service to be provided by Landlord to Tenant hereunder;
- (c) To perform any necessary maintenance or repairs that Landlord is required or permitted to perform hereunder;
- (d) To serve, post or keep posted any notices required or allowed under the provisions of this Lease;

- (e) To post "for sale" signs at any time during the term, to post "for rent" or "for lease" signs during the last ninety (90) days of the Lease term, or during any period while Tenant is in default;
- (f) To show the Property to prospective tenants, buyers, lenders or other persons at any time during the Lease term;
- (g) To do any other act or thing necessary for the safety or preservation of the Property, or to comply with the directives of any governmental authority having jurisdiction over the Property.

13.02 Tenant hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Property or any other loss occasioned by Landlord's entry pursuant to Section 13.01. Landlord shall at all times have and retain a key with which to unlock all of the doors in, on or about the Property and Landlord shall have the right to use any and all means which Landlord may deem proper to open said doors in an emergency in order to obtain entry to the Property, and any entry to the Property obtained by Landlord by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or a detainer of the Property, or an eviction, actual or constructive, of Tenant from the Property, or any portion thereof.

#### **ARTICLE 14**

#### **DEFAULT BY TENANT OR LANDLORD**

14.01 The occurrence of any one or more of the following events ("Events of Default") shall constitute a material default and breach of this Lease by Tenant:

- (a) Any failure by Tenant to pay any rental or any other sum required to be paid by Tenant hereunder, except as provided in Section 3.01, and when the same becomes due and payable and after being given a 3-Day Notice to do so.
- (b) Any failure by Tenant to observe and perform any other provision of this Lease to be observed or performed by Tenant, where such failure continues for thirty (30) days after written notice thereof by Landlord to Tenant; provided, however, that if the nature of such default is such that it cannot reasonably be cured within such thirty (30) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion.
- (c) The making by Tenant of any general assignment or general arrangement for the benefit of creditors; the filing by or against Tenant of a petition to have Tenant adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Tenant, the same is dismissed within ninety (90) days); the appointment of a trustee or receiver to take possession of substantially all of Tenant's interest in this Lease, where possession is not restored to Tenant within sixty (60) days; or the attachment, execution or other judicial seizure of

substantially all of Tenant's assets located at the Property or of Tenant's interest in this Lease, where such seizure is not discharged within forty-five (45) days.

- (d) Tenants' failure to provide services regularly to less than 20 children.

14.02 Any notice given under this Article shall specify the Event of Default and the applicable Lease provisions and shall demand that Tenant perform the provisions of this Lease or pay the rent that is in arrears, as the case may be, within the applicable period of time. No such notice shall be deemed a forfeiture, or a termination of this Lease provided Tenant cures the default within the applicable period of time.

14.03 Any failure by Landlord to observe and perform any provision of this Lease to be observed or performed by Landlord, where such failure continues for thirty (30) days after written notice thereof by Tenant to Landlord, shall be deemed a material default and breach of this Lease by Landlord; provided, however, that if the nature of such default is such that it cannot reasonably be cured within such thirty (30) day period, Landlord shall not be deemed to be in default if Landlord shall within such period commence such cure and thereafter diligently prosecute the same to completion.

## **ARTICLE 15**

### **LANDLORD'S REMEDIES UPON DEFAULT**

Upon the occurrence of an Event of Default, Landlord may terminate Tenant's right to possession of the Property at any time during the continuance of such default in accordance with the provisions of Section 1951.2 of the California Civil Code. No act by Landlord other than giving written notice to Tenant shall terminate this Lease. Acts of maintenance, efforts to relet the Property, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. On termination, Landlord has the right to recover from Tenant all rent that may accrue to the date on which possession of the Property is returned to Landlord together with any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

## **ARTICLE 16**

### **LANDLORD'S RIGHT TO CURE DEFAULTS**

If Tenant shall fail to pay any sum of money, other than rental, required to be paid by Tenant hereunder, or shall fail to perform any other act on Tenant's part to be performed hereunder, and such failure shall continue for thirty (30) days after notice thereof by Landlord, Landlord may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make such payment or perform any such other act on Tenant's part to be made or performed hereunder. All sums expended by Landlord, including necessary incidental costs, shall be deemed additional rent hereunder and shall be payable to Landlord immediately upon demand, together with interest thereon at the rate of ten percent (10%) per annum from the date of expenditure to the date of reimbursement.

## **ARTICLE 17 COSTS OF SUIT**

17.01 In the event legal action between Landlord and Tenant shall become necessary in order to enforce or interpret this Lease, or any provision contained herein, the prevailing party shall be entitled to recover all costs and expenses as may be incurred in connection therewith, including reasonable attorney's fees.

17.02 Should Landlord, without fault on Landlord's part, be made a party to any litigation instituted by Tenant or by any third party against Tenant, or by or against any person holding under or using the Property by license of Tenant, or for the foreclosure of any lien for labor or materials furnished to or for Tenant or any such other person or otherwise arising out of or resulting from any act or transaction of Tenant or of any such other person, Tenant covenants to save, defend, and hold Landlord harmless from any judgment rendered against Landlord or the Property or any part thereof, and all costs and expenses, including reasonable attorney's fees, incurred by Landlord in connection with such litigation.

## **ARTICLE 18 ESTOPPEL CERTIFICATE**

Each party, within ten (10) business days after notice from the other, shall execute and deliver to the other, in recordable form, a certificate stating that this Lease is unmodified and in full force and effect, or in full force and effect as modified stating the modifications. The certificate also shall state the amount of monthly rent, the dates to which the rent has been paid in advance, the amount of any security deposit or prepaid rent, and shall further certify that there is no uncured default by the other party under the Lease, or specify such default, if any is claimed. Failure to deliver the certificate within the ten ( 10) days, shall be conclusive upon the party failing to deliver the certificate for the benefit of the party requesting the certificate, and any successor to the party requesting the certificate, that this Lease is in full force and effect and has not been modified except as may be represented by the party requesting the certificate, that there are no uncured defaults by the party requesting the certificate and that monthly rent has not been paid in advance except as stated by the party requesting the certificate.

## **ARTICLE 19 HOLDING OVER**

If Tenant remains in possession of all or any part of the Property after the expiration of the Lease any renewal term hereof without such term being further extended pursuant to Article 2, such tenancy shall be from month to month only, and not a renewal hereof or an extension for any further term of this Lease. In such case, to apply tenancy shall be subject to every term, covenant and agreement contained herein.

## **ARTICLE 20 SURRENDER**

20.01 Upon the expiration or earlier termination of this Lease, Tenant shall surrender the Property in the same condition as received, ordinary wear and tear and damage by fire, earthquake, act of God or the elements alone excepted. Tenant shall remove all of Tenant's personal property and trade fixtures and shall repair, at Tenant's expense, any damage to the Property caused by such removal, including, without limitation, repair of floors and patching and repainting of walls where required, all to Landlord's reasonable satisfaction. Any personal property or trade fixtures not removed at the expiration or earlier termination of this Lease shall be deemed abandoned by Tenant. If Landlord so elects, Tenant shall also remove any alterations or improvements installed by or for Tenant which would otherwise remain as part of the Property and Tenant shall restore the Property to their condition prior to such installation.

20.02 Should Tenant fail to remove any personal property or trade fixtures or fail to remove any alterations or improvements as requested by Landlord, Tenant shall be liable to Landlord for any and all removal costs, transportation and storage expenses, and the cost of restoring the Property as required herein. Tenant shall indemnify Landlord against any loss, damage or liability resulting from delay by Tenant in so surrendering the Property, including, without limitation, any claims made by any succeeding tenants founded on such delay.

## **ARTICLE 21 WAIVER**

No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed, and any waiver of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Acceptance by Landlord of any performance by Tenant after the time the same shall have become due shall not constitute a waiver by Landlord of the breach or default of any covenant, term or condition unless otherwise expressly agreed to by Landlord in writing. The receipt and acceptance by Landlord of delinquent rent shall constitute only a waiver of timely payment for the particular rent payment involved.

## **ARTICLE 22 NOTICES**

22.01 All notices or demands required or permitted to be given hereunder shall be in writing and shall be either personally served or mailed by certified mail, return receipt requested, to the other party at the following addresses:

To Landlord:

City of Brisbane  
Attn: City Manager  
50 Park Place  
Brisbane, California 94005

To Tenant:

Silverspot Nursery School  
Attn: Board of Directors

4 Solano Street  
Brisbane, California, 94005

22.02 Either party may change the foregoing address by giving notice to the other in the manner provided herein. Any notice sent by mail shall be deemed received on the third business day following deposit of the notice in the United States Mail, with proper postage prepaid thereon.

## **ARTICLE 23**

### **MISCELLANEOUS PROVISIONS**

23.01 **Captions.** The captions used in this Lease are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any provision contained herein.

23.02 **Entire Agreement.** This Lease constitutes the entire agreement between the parties and supersedes and cancels any prior agreements or understandings, whether written or oral. This Lease may only be modified by a written amendment hereto executed by both parties.

23.03 **Severability.** If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

23.04 **Time.** Time is hereby declared to be of the essence of this Lease and each and every provision hereof.

23.05 **Corporate Authority.** Each of the persons executing this Lease on behalf of Tenant does hereby represent and warrant that Tenant currently is in good standing as a California nonprofit corporation; that the corporation has full right and authority to enter into this Lease; and that each person executing this Lease on behalf of the corporation is duly authorized and empowered to do so.

23.06 **Calendar Days.** Unless otherwise expressly stated, all references herein to any acts or obligations to be performed within a certain number of days shall mean calendar days.

23.07 **Choice of Law.** This Lease shall be governed by and interpreted in accordance with the laws of the State of California.

23.08 **Successors and Assigns.** Subject to the restrictions against assignment and subletting by Tenant, this Lease shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

**Balance of this page intentionally left blank.**

**IN WITNESS WHEREOF**, Landlord and Tenant have executed this Lease as of the day and year first above written.

LANDLORD: City of Brisbane, a municipal corporation

By: \_\_\_\_\_  
Jeremy Dennis, City Manager

ATTEST:

\_\_\_\_\_  
Ingrid Padilla, City Clerk

Approved as to form

\_\_\_\_\_  
Michael Roush, Legal Counsel

TENANT: Silverspot Nursery School, a California Nonprofit Corporation

By: \_\_\_\_\_  
Tom Faust, Board President

By: \_\_\_\_\_  
Diana Ji, Director