

## GROUND LEASE AGREEMENT

This **GROUND LEASE AGREEMENT** ("**Lease**") is made the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the PHILADELPHIA REDEVELOPMENT AUTHORITY, a body politic and corporate existing under the laws of the Commonwealth of Pennsylvania ("**Landlord**"), having an address of 1234 Market Street, 16th Floor, Philadelphia, PA 19107, and \_\_\_\_\_, a \_\_\_\_\_ ("**Tenant**"), having an address at \_\_\_\_\_.

### BACKGROUND

The background of the Lease is as follows:

A. Landlord is a body corporate and politic created and organized pursuant to and in accordance with the provisions of the Urban Redevelopment Law of May 24, 1945, of the Commonwealth of Pennsylvania (the "**Commonwealth**") for the purposes, *inter alia*, of redeveloping real estate in the City of Philadelphia (the "**City**") in order to eliminate blighted areas, to eliminate economically and socially undesirable land uses, and to encourage the provision of adequate places of employment.

B. Landlord is the owner of the property located at and known as 614-26 S. 13th Street (including 1306-10 Kater Street and 1309-13 Bainbridge Street), Philadelphia, Pennsylvania, as more particularly described on **Exhibit "A"** attached hereto, and all improvements constructed thereon (collectively, the "**Premises**")

C. On or about \_\_\_\_\_, 2020, Landlord issued a Request for Proposals, a copy of which is attached as **Exhibit "B"** to this Lease and made a part hereof (the "**RFP**"), seeking a qualified developer to lease and develop the Premises as an affordable housing project in accordance with the terms of the RFP. Tenant was ultimately selected as the most qualified respondent to the RFP.

D. Tenant intends to construct \_\_\_\_\_ (\_\_\_\_) residential rental units on the Premises, of which not less than \_\_\_\_\_ (\_\_\_\_) residential rental units (the "**Affordable Units**") shall be (1) reserved for renters with household incomes not to exceed sixty percent (60%) of the area median income ("**AMI**") as determined by the United States Department of Housing and Urban Development ("**HUD**"), and (2) shall be rented at levels that are affordable to households at sixty percent (60%) of AMI, based on such households spending no more than thirty percent (30%) of their adjusted gross income on housing costs (the "**Development Project**").

E. Contemporaneously with the execution of this Lease, Landlord and Tenant have executed a Redevelopment Agreement, as authorized by the Council of the City of Philadelphia on \_\_\_\_\_ by Resolution No. \_\_\_\_\_, and the Landlord's Board of Directors on \_\_\_\_\_, by Resolution No. \_\_\_\_\_, that

authorizes Landlord to transfer a leasehold interest in the Premises to Tenant in order to promote the better utilization of the Premises and to allow Tenant to construct the Development Project and the Improvements (defined below) thereon.

F. Landlord and Tenant desire to enter into a written lease for the use, operation and maintenance of the Premises and for use and maintenance of those Improvements that Tenant will make to the Premises as more specifically described in the Redevelopment Agreement.

**WITNESSETH**

**THAT FOR AND IN CONSIDERATION** of the mutual covenants and agreements herein contained and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Landlord and Tenant, intending to be legally bound, do hereby covenant and agree as follows:

**ARTICLE 1**  
**LEASE SUMMARY AND DEFINED TERMS**

**Section 1.1.** The following is a summary of the Lease Terms set forth at length in this Lease:

	<u>TOPIC</u>	<u>LEASE REF.</u>	<u>TERM/CONDITION/INFORMATION</u>
a.	Premises	Background; Exhibit "A"	614-26 S. 13th Street (including 1306-10 Kater Street and 1309-13 Bainbridge Street), as more particularly described on Exhibit "A" attached hereto
b.	Lease commencement date	§3.1	The date of Settlement under Paragraph 1.6 of the Redevelopment Agreement
c.	Term	§3.1	Ninety-nine (99) years commencing on the Settlement Date
d.	Fixed Minimum Rent	§4.1	During the first year of the Term, the Fixed Minimum Rent shall be in the annual amount of _____ Dollars (\$ _____), and payable in monthly installments of _____

			<p style="text-align: center;"><b>Dollars</b></p> <p>(\$_____). Thereafter, beginning with the second (2nd) year of the Term, the Fixed Minimum Rent shall be adjusted annually by three percent (3%) above the Fixed Minimum Rent from the prior year for each subsequent year throughout the Term.</p>
e.	Additional Rent	§4.2	<p>(i) Any and all sums which may become due by reason of the failure of Tenant to comply with all of the covenants of the Lease, (ii) any and all damages, costs and expenses which the Landlord may suffer or incur by reason of any default of the Tenant or failure on Tenant's part to comply with the covenants of this Lease, and (iii) any and all damages to the Premises caused by any act or neglect of the Tenant or any subtenant</p>
f.	Triple Net Lease	<p>§4.3; Article 6</p> <p>§7.1</p>	<p>Tenant to pay all real estate taxes, levies, assessments, liens, water and sewer taxes and charges, and all other charges, imposts or burdens of whatsoever kind and nature, which are created, levied, assessed, confirmed, adjudged, imposed or charged by any federal, state or municipal government or public authority, or under any law, ordinance or regulation thereof, or pursuant to any recorded covenants or agreements upon or with respect to the Premises</p> <p>Tenant to pay all rents, charges and costs for water, gas, heat, steam, air-conditioning, power, electricity, telephone, water and sewer taxes or charges and other utilities and services (public or private) furnished to, or consumed in or upon, the Premises;</p>

		<p>Article 9</p> <p>Article 17</p>	<p>Tenant to acquire and pay for all permits or licenses which may be required for Tenant's business and to pay when due all occupation taxes, curb cut permit fees and all other charges levied or assessed against the Premises.</p> <p>Tenant solely responsible for the condition, operation, repair, security, replacement and maintenance of the Premises and the Improvements</p> <p>Tenant solely responsible for all insurance costs and coverages</p>
g.	Use of Premises	§5.1	<p>Tenant shall continuously use the Premises for purposes of constructing, operating and maintaining the Development Project, which shall include a minimum of _____ (___) Affordable Units which shall be (i) reserved for renters with household incomes not to exceed sixty percent (60%) of AMI as determined by HUD, and (ii) shall be rented at levels that are affordable to households at sixty percent (60%) of AMI, based on such households spending no more than thirty percent (30%) of their adjusted gross income on housing costs. In the event that the total number of residential rental units increases or decreases during the Term for any reason, Tenant must maintain at least thirty percent (30%) of the total residential rental unit composition as Affordable Units</p>
h.	Alterations	§8.2	<p>Alterations in excess of Fifty Thousand Dollars (\$50,000) require that plans and specifications be submitted to Landlord at least ten (10) days prior to</p>

			commencement of work
i.	Income Certifications	§13.6 and §13.7	Landlord to perform subtenant income certifications annually
j.	Indemnification	Article 16	Tenant required to indemnify Landlord, the City, PHDC and their respective officers, directors, employees and agents
k.	Leasehold Mortgages	Article 18	Tenant is permitted to grant to any bank, savings and loan association or other institutional, nonprofit, governmental, quasi-governmental or governmental sponsored entity lender a mortgage lien encumbering Tenant's leasehold interest lender upon certain terms and conditions
l.	Security Deposit	§19.1	Tenant required to pay to Landlord a Security Deposit in the amount of _____ Dollars (\$_____)
m.	Grace Period	§22.1	Within five (5) days of the date which is set forth in the Lease if a date is specified, or, if a date is not specified, within thirty (30) days of receipt of notice by Landlord
n.	Late Fee	§22.1	Five percent (5%) of amount owed following Grace Period

**Section 1.2.** Wherever used in this Lease, the following terms shall have the following meanings:

**Abandonment Notice** shall have the meaning set forth in Section 18.1(vi), below.

**Additional Rent** shall have the meaning set forth in Section 4.2, below.

**Affordable Units** shall have the meaning set forth in the Background, above.

**Alterations** shall have the meaning set forth in Section 8.2, below.

**AMI** shall have the meaning set forth in the Background, above.

**Applicable Laws** shall mean all federal, state and local laws, ordinances, regulations, codes and requirements.

**Certificate Date** mean the date on which the Certificate of Completion is issued pursuant to Paragraph 4.12 of the Redevelopment Agreement.

**City** shall mean the City of Philadelphia.

**Commonwealth** shall mean the Commonwealth of Pennsylvania.

**Construction Non-Discrimination Covenants** shall have the meaning set forth in Section 5.9, below.

**Development Project** shall have the meaning set forth in the Background, above.

**Environmental Laws** shall mean all federal, state or Commonwealth and local laws, common law, administrative decisions or orders, regulations, statutes, codes, rules, resolutions, directives, orders, executive orders, consent orders, guidance from regulatory agencies, policy statements, judicial decrees, standards, permits, licenses and ordinances, or any judicial or administrative interpretation of any of the foregoing, pertaining to the protection of land, water, air, health, safety or the environment, whether now or in the future enacted, promulgated or issued, including the laws of the Commonwealth and including, without limitation, the disposal, generation, manufacture, presence, processing, release, storage, sale, handling, transportation, remediation, treatment or use of any hazardous or regulated substances, which shall include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, and as further amended from time to time, and regulations promulgated thereunder, the Clean Air Act, 42 U.S.C. § 7401 et seq., the Safe Drinking Water Act, 42 U.S.C. § 300(F) et seq., the Solid Waste Disposal Act, 42 U.S.C. § 3251 et seq., the Hazardous Materials Transportation Act, 42 U.S.C. § 1801 et seq., as amended, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended ("**RCRA**"), the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act of 1976, 15 U.S.C. § 2601 et seq., the Federal Environmental Pesticide Control Act, 7 U.S.C. § 136, et seq., the Land Recycling and Environmental Remediation Standards Act, Act of May 19, 1995, as amended, 35 P.S. §§ 6026.101 - 6026.908 ("**Act 2**"), the Hazardous Sites Cleanup Act, Act of October 18, 1988, as amended, 35 P.S. §§ 6020.101 - 6020.1305, the Solid Waste Management Act, Act of July 7, 1980, as amended, 35 P.S. §§ 6018.101 - 6018.1003; the Clean Streams Law, Act of June 22, 1937, as amended, 35 P.S.

§§691.1 - 691.1001; the Storage Tank and Spill Prevention Act, Act of July 6, 1989, as amended, 35 P.S. §§6021.101 - 6021.2104; Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq., as amended, the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., as amended, the Clean Water Act, 33 U.S.C. § 1251 et seq., as amended, the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., as amended, Hazardous Material Emergency Planning and Response Act, 35 P. S. § 6022.101 et seq., as amended, Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, as amended, 71 P.S. § 510-17, the Uniform Environmental Covenants Act, as amended, 27 Pa.C.S.A. §§ 6501-6517, and any successor statutes and regulations to or issued or promulgated under the foregoing.

**Event of Default** shall have the meaning set forth in Section 22.1, below.

**Fixed Minimum Rent** shall have the meaning set forth in Section 4.1, below.

**Hazardous Substances** shall mean any and all substances, chemicals, materials or elements that are prohibited, limited or regulated by the Environmental Laws (defined above), including, but not limited to, common law, or any other substances, chemicals, materials or elements that are defined as "hazardous," "toxic," "pollutants," "contaminants," or otherwise regulated, under the Environmental Laws, or that are known or considered to be harmful to the health or safety of occupants or users of the Premises or adjacent property owners. The term Hazardous Substances shall also include any substance, chemical, material or element (i) defined as a "regulated substance" or "contaminant" under Act 2 (defined above); (ii) defined as a "regulated substance" under the RCRA (defined above), and regulations promulgated thereunder; (iii) which is oil, crude oil, natural gas, natural gas liquids, synthetic gas, petroleum, petroleum products or derivatives or by products or constituents thereof of any of the foregoing; (iv) which is asbestos or asbestos-containing materials; (v) which is flammables, volatile hydrocarbons, industrial solvents, explosives, chemicals, radioactive material, chemical gases and liquids, volatile or highly volatile liquids and/or synthetic gas; (vi) the presence of which requires notification, investigation or remediation under any Environmental Laws or common law; (vii) the presence of which on the Premises causes or threatens to cause a nuisance upon the Premises or a nuisance or trespass to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Premises or adjacent to the Premises; (viii) which is urea formaldehyde foam insulation or urea formaldehyde foam insulation-containing materials; (ix) which is lead base paint or lead base paint-containing materials; (x) which are polychlorinated biphenyls or polychlorinated biphenyl-containing materials; (xi) which is radon or radon-containing or producing materials; (xii) any and all other materials or substances that any governmental agency or unit having appropriate jurisdiction shall determine from time to time are hazardous, harmful, toxic, dangerous or otherwise required to be removed, cleaned up or remedied; or (xiii) which by any laws of any governmental agency, unit or authority requires special handling in its collection, storage, treatment, or disposal.

**HUD** shall have the meaning set forth in the Background, above.

**Improvements** shall mean all physical additions and repairs to the Premises (defined below) that Tenant shall be required to make in accordance with the Redevelopment Agreement.

**Income Certification** shall have the meaning set forth in Section 13.6, below.

**Insured** shall have the meaning set forth in Section 17.1, below.

**ISO** shall have the meaning set forth in Section 17.1(i), below.

**Landlord** shall mean the Philadelphia Redevelopment Authority.

**Leasehold Lender** shall have the meaning set forth in Section 18.1(i), below.

**Leasehold Mortgage** shall have the meaning set forth in Section 18.1(i), below.

**Lender Cure Notice** shall have the meaning set forth in Section 18.1(iv)(b), below.

**Lender Notice** shall have the meaning set forth in Section 18.1(ii), below.

**New Lease** shall have the meaning set forth in Section 18.1(viii), below.

**Non-Discrimination Covenants** shall have the meaning set forth in Section 5.10, below.

**Payment in Lieu of Taxes** shall have the meaning set forth in Section 6.2, below.

**PDF** shall have the meaning set forth in Section 31.11, below.

**Person** shall mean any individual, general partnership, limited partnership, limited liability company, corporation, joint venture or association.

**Premises** shall mean 614-26 S. 13th Street (including 1306-10 Kater Street and 1309-13 Bainbridge Street), as more particularly described on **Exhibit "A"** attached hereto, and shall also include all Improvements made in accordance with the Redevelopment Agreement.

**Redevelopment Agreement** shall mean that Redevelopment Agreement dated even date herewith between Landlord and Tenant, as that Agreement may be amended from time



to time.

**Releasees** shall have the meaning set forth in Section 10.3, below.

**Releasors** shall have the meaning set forth in Section 3.1, below.

**Rent** shall have the meaning set forth in Section 4.2, below.

**RFP** shall have the meaning set forth in the Background, above.

**Security Deposit** shall have the meaning set forth in Section 19.1, below.

**Settlement** shall have the meaning set forth in Paragraph 1.6 of the Redevelopment Agreement.

**Settlement Date** shall be the date of Settlement as provided in Paragraph 1.6 of the Redevelopment Agreement.

**SIR** shall have the meaning set forth in Section 17.5(vii), below.

**Term** shall have the meaning set forth in Section 3.1, below.

**United States** shall have the meaning set forth in Section 5.11, below.

**Use Non-Discrimination Covenants** shall have the meaning set forth in Section 5.10, below.

## **ARTICLE 2** **PREMISES**

**Section 2.1.** Landlord does hereby demise and let unto the Tenant and Tenant does hereby lease and take from Landlord for the Term and upon the terms, covenants, conditions, and provisions set forth herein, the Premises. At all times during the Term of this Lease, fee ownership of and title to the Premises and all Improvements constructed thereon shall be and remain in the name of Landlord.

## **ARTICLE 3** **TERM**

**Section 3.1.** The term of this Lease (the "**Term**") and Tenant's obligation to pay rent hereunder shall commence on the Settlement Date, and Settlement shall be a condition precedent

to the commencement of this Lease. Unless sooner terminated in accordance with the terms hereof, the Term of this Lease shall end without the necessity for notice from either party **ninety-nine (99) years** from the Settlement Date. Possession of the Premises shall be delivered to Tenant on the Settlement Date, free and clear of all tenants and occupants. If the Settlement Date shall be other than the first day of a month, the Term of this Lease shall expire on the ninety-ninth (99th) anniversary of the last day of the month in which the Settlement Date occurs. In the event that Tenant does not quit and surrender the Premises upon the termination of this Lease pursuant to its provisions or by operation of law, or at the expiration of the Term, Landlord will have the right to resort to self-help to the extent permitted by applicable law and any other remedies Landlord deems necessary to remove Tenant from the Premises.

#### **ARTICLE 4**

#### **FIXED MINIMUM RENT; ADDITIONAL RENT; TRIPLE NET LEASE**

**Section 4.1.** Tenant covenants to pay to Landlord at such place as Landlord shall from time to time direct, the fixed minimum rent ("**Fixed Minimum Rent**") during the first year of the Term in the annual amount of \_\_\_\_\_ **Dollars** (\$ \_\_\_\_\_), and payable in monthly installments of \_\_\_\_\_ **Dollars** (\$ \_\_\_\_\_). Thereafter, beginning with the second (2nd) year of the Term, the Fixed Minimum Rent shall be adjusted annually by three percent (3%) above the Fixed Minimum Rent from the prior year for each subsequent year throughout the Term all as specifically set forth in the "Fixed Minimum Rent Payments" table, a true and correct copy of which is attached hereto as **Exhibit "C."** All such installments of the Fixed Minimum Rent shall be payable, in advance, without demand or notice, beginning on the Settlement Date and on the first day of each calendar month thereafter throughout the Term. Rent shall be paid in lawful currency of the United States of America to Landlord at 1234 Market Street, 16<sup>th</sup> Floor, Philadelphia, Pennsylvania 19107, or to such other person and such other place as Landlord may designate in writing.

**Section 4.2.** Tenant agrees to pay as rent in addition to the Fixed Minimum Rent any and all sums which may become due by reason of the failure of Tenant to comply with all of the covenants of this Lease and any and all damages, costs and expenses which the Landlord may suffer or incur by reason of any default of the Tenant or failure on Tenant's part to comply with the covenants of this Lease, and each of them, and also any and all damages to the Premises caused by any act or neglect of the Tenant ("**Additional Rent**"). The Fixed Minimum Rent and the Additional Rent shall be referred to herein as the "**Rent.**"

**Section 4.3.** **THIS LEASE IS WHAT IS COMMONLY CALLED A "TRIPLE NET LEASE," AND LANDLORD SHALL RECEIVE THE RENT PAYABLE TO IT FREE AND CLEAR OF ANY AND ALL IMPOSITIONS, TAXES, LIENS, CHARGES, DEDUCTIONS OR EXPENSES OF ANY NATURE WHATSOEVER IN CONNECTION WITH THE OWNERSHIP, OPERATION, MAINTENANCE, REPAIR (INCLUDING,**

**WITHOUT LIMITATION, ALL STRUCTURAL, ROOF AND BUILDING SYSTEMS), RESTORATION, OCCUPANCY, OR USE OF THE PREMISES. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS LEASE, LANDLORD SHALL NOT BE RESPONSIBLE FOR ANY COSTS, EXPENSES, OR CHARGES OF ANY KIND OR NATURE RESPECTING THE PREMISES AND LANDLORD SHALL NOT BE REQUIRED TO RENDER ANY SERVICES OF ANY KIND TO TENANT OR TO THE PREMISES.**

**ARTICLE 5**  
**USE OF PREMISES; CONSTRUCTION OF THE DEVELOPMENT PROJECT AND IMPROVEMENTS**

**Section 5.1.** Subject to the terms of this Lease, Tenant shall continuously use the Premises for purposes of constructing, operating and maintaining the Development Project, which shall include a minimum of \_\_\_\_\_ (\_\_\_) Affordable Units which shall be (i) reserved for renters with household incomes not to exceed sixty percent (60%) of AMI as determined by HUD, and (ii) shall be rented at levels that are affordable to households at sixty percent (60%) of AMI, based on such households spending no more than thirty percent (30%) of their adjusted gross income on housing costs. In the event that the total number of residential rental units increases or decreases during the Term for any reason, Tenant must maintain at least thirty percent (30%) of the total residential rental unit composition as Affordable Units. Tenant, and those holding by, through and under Tenant, shall not use or occupy the Premises for any other purpose or business without the prior written consent of Landlord, such consent not to be unreasonably withheld, conditioned or delayed. Tenant shall be fully responsible for assuring the activities of its agents, employees, licensees and invitees comply with the permitted use of the Premises

**Section 5.2.** Except for the uses permitted pursuant to the terms of this Lease, Tenant shall not permit or suffer any act to be done or any condition to exist in, on or about the Premises or any part thereof or any article (including but not limited to any vehicle) to be brought thereon, which may be dangerous to persons or property or which may constitute a public or private nuisance or which may make void or voidable any insurance then in force with respect to the Premises or any part thereof. Tenant shall keep the Premises, and every part thereof, in a decent, safe and sanitary condition, free from any objectionable noises or odors, except as may be typically present for the permitted uses set forth in this Lease.

**Section 5.3.** Tenant shall take such commercially reasonable action as may be necessary to preclude a claim of adverse usage or possession by the public or of implied dedication of the Premises or any part thereof.

**Section 5.4.** Tenant shall, at Tenant's expense, comply promptly with all Applicable Laws, statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements in effect or which become effective during the Term, regulating the use by Tenant of the Premises.

**Section 5.5.** Tenant shall be responsible for constructing the Development Project and the Improvements associated therewith in accordance with the Redevelopment Agreement and for obtaining any necessary governmental or quasi-governmental permits, licenses and approvals necessary to develop the Development Project and the Improvements associated therewith.

**Section 5.6.** Tenant shall pay, or cause to be paid, all costs for work done by or caused to be done by Tenant on the Premises, including the construction of the Development Project and the Improvements associated therewith, and for all materials furnished for or in connection with any such work. If any claim is filed against Landlord or Tenant or if any lien is filed against the Premises, Tenant shall cause the claim or lien to be discharged of record within ten (10) days after it is filed. Tenant shall indemnify, defend and hold Landlord harmless from any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished for Tenant or persons claiming under Tenant.

**Section 5.7.** Tenant and Tenant's contractors and subcontractors shall be required to carry builder's risk insurance, commercial general liability insurance and any other insurance coverage as provided in the Redevelopment Agreement and Article 17, below.

**Section 5.8.** Prior to placement or display of any signage, Tenant shall present to Landlord for approval all plans and drawings for all signs and sign structures to be placed on the Premises. Landlord may refuse a sign or other display if Landlord believes that the sign or display is not suitable for display on publicly owned property. Tenant shall obtain all required sign permits at its own expense, and all signs must comply with applicable sign codes, rules and regulations.

**Section 5.9.** In the design, development and construction of the Development Project and the Improvements and in connection with any Alterations, Tenant hereby agrees to comply with the provisions set forth in the Redevelopment Agreement and below related to non-discrimination (collectively, "**Construction Non-Discrimination Covenants**"):

(i) Tenant will not discriminate against any employee or applicant for employment. Tenant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

(ii) Tenant will send to each labor union or representative of workers with which Tenant has a collective bargaining agreement or other contract or understanding, if any, a notice advising the labor union or workers' representative of Tenant's obligations under this Lease and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(iii) Tenant will include the provisions of this Section in every contract or purchase order related to construction of the Development Project and will require the inclusion of these provisions in every subcontract entered into by any of its contractors performing construction at the Premises so that such provisions will be binding upon each such contractor, subcontractor or vendor. Tenant will take such action with respect to any construction contract, subcontract or purchase order as Landlord may direct as a means of enforcing such provisions, including sanctions for noncompliance. For the purpose of including such provisions in any construction contract, subcontract or purchase order as required hereby, the language of this Section shall be preceded by the words "During the performance of this Contract, the Contractor agrees as follows:" and the term "Tenant" shall be changed to "Contractor," "Subcontractor," or "Vendor," as applicable.

**Section 5.10.** Tenant hereby covenants, promises and agrees to the following non-discrimination covenants related to the use of the Premises ("**Use Non-Discrimination Covenants**" and, collectively with the Construction Non-Discrimination Covenants, "**Non-Discrimination Covenants**"):

(i) No person shall be deprived of the right to live in the Premises (if applicable), or to use any of the facilities therein, for reasons that would violate Applicable Laws prohibiting discrimination because of race, color, religion or national origin, affectional preference or gender identity.

(ii) There shall be no discrimination in the use or lease of any part of the Premises because of race, color, religion or national origin affectional preference or gender identity.

**Section 5.11.** The Nondiscrimination Covenants shall be a covenant running with the land and shall be binding, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Lease, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, Landlord, its successors and assigns, the City, and the United States of America ("**United States**"). In amplification, and not in restriction, of the Nondiscrimination Covenants, it is intended and agreed that Landlord and its successors and assigns, City, and the United States shall be deemed beneficiaries of the Nondiscrimination Covenants, for and in their or its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been

provided. Such agreements and covenants shall run in favor of Landlord, City, and the United States, for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether Landlord, City or the United States has at any time been, remains, or is an owner of any land or interest therein to, or in favor of, which such agreements and covenants relate. Landlord, City and United States shall have the right, in the event of any breach of the Nondiscrimination Covenants, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach. Further, without limiting the generality of the foregoing, in the event that Tenant is not in compliance with the Non-Discrimination Covenants or with any of the aforementioned rules, regulations or orders, then Landlord may declare an Event of Default hereunder.

## **ARTICLE 6**

### **TAXES**

**Section 6.1.** Tenant shall pay when due throughout the Term and before any fine, penalty, interest or cost may be added, all real estate taxes, levies, assessments, liens, water and sewer taxes and charges, and all other charges, imposts or burdens of whatsoever kind and nature, general or special, foreseen or unforeseen, whether or not particularized by name, ordinary or extraordinary, which are applicable to the term of this Lease, and which are created, levied, assessed, confirmed, adjudged, imposed or charged by any federal, state or municipal government or public authority, or under any law, ordinance or regulation thereof, or pursuant to any recorded covenants or agreements upon or with respect to the Premises, or any improvements made thereto, or any part of the foregoing, and any appurtenances thereto, or directly upon this Lease or amounts payable by any subtenants or other occupants of the Premises, or upon this transaction or any related documents to which Tenant is a party or successor in interest or against Landlord because of Landlord's estate or interest herein. Nothing herein contained shall prevent or prohibit Tenant or Landlord from protesting the validity or amount of any levy or assessment against the Premises or from taking such actions as may be required or permitted by law for enforcing and effecting such protest. In this connection Tenant may, if required by law, withhold the payment of any such protested taxes or assessments, but only on the express condition that the withholding of such payment shall be consented to by Landlord. Said consent shall not be withheld so long as Tenant proceeds in such protest according to statute and provides satisfactory security under such statute or otherwise to the effect that the Premises shall not be lost for the nonpayment of such taxes or assessments.

**Section 6.2.** Without limiting the obligations set forth in this Article or elsewhere in this Lease, Tenant acknowledges and agrees that if, because of the interest of the Landlord and/or Tenant in the Premises or the Improvements, it is determined that any real estate taxes or assessments are not payable in whole or in part on the Premises or the Improvements, then a payment or annual or other periodic amounts equal to the amount of real property taxes or assessments that would otherwise have been paid or payable with respect to the Premises and

with respect to the Improvements if any one or more Tenants, licensees or any other occupants of the Premises or the Improvements or any part of either were the fee owner of the Premises or the occupied part thereof, shall be paid by Tenant to Landlord ("**Payment in Lieu of Taxes**"). The amounts of Payments in Lieu of Taxes to be charged Tenant will be established by the City Board of Revision of Taxes. This Payment In Lieu of Taxes shall be paid to Landlord on the same date established by the City for payment of real property taxes. Nothing herein shall be construed to require Tenant to pay taxes which would not otherwise be payable by Tenant if Tenant were the fee owner of the Premises under any applicable real estate tax abatement program. Notwithstanding the foregoing, Tenant shall have no obligation to make a Payment in Lieu of Taxes if Tenant qualifies as a tax-exempt organization under applicable state, city or school district tax regulations.

**ARTICLE 7**  
**UTILITIES AND OTHER CHARGES**

**Section 7.1.** Tenant agrees to pay when due and before any fine, penalty, interest or cost may be added, all rents, charges and costs for water, gas, heat, steam, air-conditioning, power, electricity, telephone, water and sewer taxes or charges and other utilities and services (public or private) furnished to, or consumed in or upon, the Premises. Tenant agrees to acquire and pay for all permits or licenses which may be required for Tenant's business and to pay when due all occupation taxes, curb cut permit fees and all other charges levied or assessed against the Premises. Landlord is not and shall not be required to render any such services to Tenant.

**Section 7.2.** In addition to all obligations expressly imposed upon it by the other provisions of this Lease, Tenant shall pay any and all charges, costs and expenses arising out of or relating to its occupancy, construction, use or operation of the Premises.

**ARTICLE 8**  
**ALTERATIONS, ADDITIONS AND FIXTURES**

**Section 8.1.** Subject to the provisions of Article 9 hereof, Tenant shall have the right to install in and on the Premises any trade fixtures; provided, however, that no such installation or removal thereof shall affect the structural portion of the Premises and that Tenant shall repair and restore any damage or injury to the Premises caused thereby.

**Section 8.2.** After the Certificate Date, Tenant shall not make or permit to be made any alterations, improvements or additions to the Premises costing in excess of Fifty Thousand Dollars (\$50,000.00) ("**Alterations**") unless (i) on each occasion Tenant first presents to Landlord plans and specifications therefor and any necessary permits therefor at least ten (10) days in advance of commencing construction thereof; (ii) such Alterations do not impair the structural strength of the Premises or other improvements thereto; and (iii) Tenant shall take or cause to be taken all steps that

are required by Article 14 hereof and that are required or permitted by law in order to avoid the imposition of any mechanic's, laborer's or materialman's lien upon the Premises. Upon completion of installation, all Improvements constructed in accordance with the Redevelopment Agreement and all other Alterations and additions shall remain on the Premises and become part of the Premises without payment therefor by Landlord.

**ARTICLE 9**  
**MAINTENANCE, REPAIR, REPLACEMENTS**

**Section 9.1.** Throughout the Term, Tenant, at its sole cost and expense and in addition to the requirements set forth in the Redevelopment Agreement, shall take good care of the Premises and the Improvements in or on the Premises, shall keep the same in good order and condition reasonable wear and tear excepted, and shall promptly make all necessary and prudent repairs thereto, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen and shall maintain the sidewalks along the entire perimeter of the Premises. When used in this Article, the term "repairs" shall include all replacements and renewals necessary to maintain the Improvements in good order and condition. All repairs made by Tenant shall be at least equal in quality and class to the original work.

**Section 9.2.** Tenant shall put, keep and maintain all portions of the Premises and Improvements in a reasonably clean and orderly condition, free of garbage, rubbish, graffiti, unlawful obstructions and the accumulation of snow and ice.

**Section 9.3.** Tenant shall promptly repair any injury or damage to the Premises caused by Tenant, its invitees, and all others.

**Section 9.4.** Neither the City nor Landlord shall be required to maintain, alter, repair, build, rebuild or replace any Improvements now or hereafter located in or on the Premises (whether such work be interior or exterior, structural or nonstructural, ordinary or extraordinary, foreseen or unforeseen). Tenant hereby assumes the full and sole responsibility for the condition, operation, repair, replacement and maintenance of the Premises and the Improvements, including, but not limited to, all repairs required as a result of vandalism or malicious mischief.

**Section 9.5.** Tenant shall, at its sole cost and expense, take such commercially reasonable measures as may be necessary to keep the Premises and the Improvements secure and safe at all times.

**Section 9.6.** The Improvements and all Alterations, improvements, additions, repairs and all other property attached to or used in connection with the Improvements or any part thereof made or installed on the Premises by or on behalf of Tenant shall immediately upon completion



or installation thereof be and become part of the Premises. Subject to the terms and conditions of this Lease, until the expiration or earlier termination of this Lease, (i) the Improvements shall be and remain the property of Tenant, and (ii) Tenant shall have the rights and benefits of ownership of all such Improvements, including, without limitation the right to claim depreciation of the same for tax purposes, if legally permissible.

## **ARTICLE 10**

### **CONDITION OF PREMISES; RELEASE**

**Section 10.1.** Tenant acknowledges and agrees that its Lease of the Premises is subject to the "As Is" condition of the Premises, including without limitation, all defects latent and patent, the title thereto, the zoning thereof, any surface and subsurface conditions thereof, and the present uses and non-uses thereof, and in the condition or state in which they are, or any of them is, as of the date of execution of this Lease, and without representation or warranty, express or implied, in fact or in law, by the Landlord and without recourse to the Landlord, as to the title thereto, encumbrances, restrictions and conditions thereon, the nature, condition, or usability thereof or the use or uses to which the Premises or any part thereof may be put. Tenant has inspected the Premises to its complete satisfaction and accepts the Premises without relying upon any information regarding the Premises that Tenant may have obtained from Landlord. Tenant further acknowledges and agrees that Landlord shall have no obligation whatsoever to maintain, repair or operate the Premises or any part thereof, including but not limited to the Improvements made by Tenant or at Tenant's direction, and that any and all such maintenance required by Tenant shall be performed by Tenant at Tenant's sole cost and expense in accordance with the terms of this Lease.

**Section 10.2.** Landlord shall not be held responsible for, and is hereby expressly relieved from any and all liability by reason of any injury, loss, or damage to any property or person happening on, in or about the Premises and its appurtenances, nor for any injury or damage to the Premises, or to any property, whether belonging to Tenant or any other person, due to any cause whatever including (by way of illustration and not limitation) damage caused by fire, breakage, leakage, defect or bad condition of the Premises, or from water, rain or snow that may leak into, issue or flow from any part of the Premises, from the drains, pipes, or plumbing work of the same, or from any place or quarter, whether now existing or which may hereafter be erected or constructed in or on the Premises, or from any kind of injury which may arise from any other condition whatsoever on the Premises.

**Section 10.3.** Tenant, for itself and for its officers, employees, agents, successors, assigns, transferees, sublessees, and invitees, and any person claiming under or through them (collectively, "**Releasers**"), does hereby release, remise, quitclaim and forever discharge Landlord, the City, the Philadelphia Housing Development Corporation ("**PHDC**") and their respective officers, employees, agents, successors, assigns, transferees (collectively,

"Releasees"), from any and all, and all manner of, actions and causes of action, suits, claims, and demands whatsoever in law or in equity which any of the Releasers may have against the Releasees relating in any way whatsoever to any past, present, or future condition in, on, or about the Premises, or the entry onto the Premises by any of the Releasees relating in any way to the exercise of any rights or performance of any obligations under this Lease. Subject to the foregoing, Tenant, for itself and the other Releasers, hereby voluntarily assumes all risks of loss, damage, or injury including death, that may be sustained by Tenant or any of the Releasers while in, on, or about the Premises and/or in the exercise of the leasehold interest granted under this Lease.

Without in any way limiting the release by Tenant set forth above, Tenant and the Releasers further release the Releasees from any and all, and all manner of, actions and causes of action, suits, claims, and demands whatsoever in law or in equity which any of the Releasers may have against the Releasees relating in any way whatsoever to the entry onto the Premises under Article 12, below, including but not limited to claims for implied condemnation, temporary condemnation, partial condemnation, nuisance, diminution of property value, restriction of access to the Premises or property contiguous or in proximity to the Premises, or damage to personal property arising out of such access unless, in all cases, as a result of the gross negligence or willful misconduct of Releasees.

## **ARTICLE 11**

### **COMPLIANCE WITH LAWS**

**Section 11.1.** Throughout the Term and at its sole cost and expense, Tenant shall: (i) comply promptly with all Applicable Laws, ordinances, notices, orders, rules, regulations and requirements of all federal, state and municipal governments and all departments, commissions, boards and officers thereof, and all of the National Fire Protective Authority or any other body now or hereafter constituted exercising similar functions; and (ii) keep in force at all times all licenses, consents and permits necessary for the lawful use of the Premises for the purposes herein provided; and (iii) comply with the requirements of all public liability, fire, and other policies of insurance covering the Premises whether any of the foregoing are foreseen or unforeseen, ordinary or extraordinary. If during the Term, any violation of law or other governmental regulation occurs, Tenant shall take immediate action at its sole cost and expense to remove such violation and bring the Premises in compliance therewith.

**Section 11.2.** Without limiting the generality of Section 11.1, above, Tenant shall at all times during this Lease comply with all Environmental Laws applicable to the Premises and any activities conducted by Tenant thereon. Tenant shall not cause or permit any Hazardous Substances (including, without limitation, the meaning set forth in 40 C.F.R. Section 302.4 and shall also include petroleum, petroleum products and used oil) or other dangerous toxic substances or any Solid Waste (including, without limitation, the meaning set forth in 40 C.F.R.

Section 261.2 and in 35 Pa. C.S. Section 6018.103) to be generated, manufactured, refined, transported, treated, stored, disposed of, handled, processed, produced or released (as defined in 42 U.S.C. Section 9601) on the Premises, except in compliance with all Applicable Laws and regulations.

**Section 11.3.** Tenant agrees to indemnify, defend and hold harmless Landlord, the City, PHDC and their respective officers, directors, employees and agents against and with respect to any and all damages, claims, losses, liabilities and expenses of any kind, including without limitation legal and consulting expenses, incurred by Landlord or which are asserted against or imposed upon Landlord by any other party (including without limit any governmental entity) arising out of or connected with Tenant's breach of or misrepresentation in any provision of this Article.

## **ARTICLE 12**

### **LANDLORD'S RIGHT OF ENTRY**

**Section 12.1.** Upon five (5) days written notice to Tenant or, in the case of an emergency without notice, the Landlord or Persons authorized by either shall have the right to enter the Premises to inspect the physical condition of the Premises and Tenant's compliance with the terms of this Lease.

**Section 12.2.** Landlord reserves, for itself and its successors and assigns, the right to make any repairs and perform any work in or about the Premises that may be necessary by reason of Tenant's failure to perform any such obligation under this Lease, promptly after written notice from Landlord or without notice in case of an emergency. Nothing in this Lease shall create or imply any duty upon Landlord to make any such repairs or perform any such work and performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same. Landlord shall not in any event be liable for inconvenience, annoyance, disturbance or other damage to Tenant by reason of making such repairs or on account of bringing materials, supplies and equipment into the Premises during the course of any work on the Premises. Tenant shall pay to Landlord, upon demand, as Additional Rent the actual cost of any and all such repairs and/or work performed by Landlord in accordance with this section 12.2.

## **ARTICLE 13**

### **ASSIGNMENT AND SUBLETTING**

**Section 13.1.** Except as provided in this Article 13 or Article 18, Tenant shall not assign or otherwise transfer this Lease without the prior written consent of Landlord. This prohibition against assigning shall be construed to include a prohibition against any assignment by operation of law. If Tenant is a corporation, limited liability company or partnership, any transfer, pledge, or other disposition of more than 49.9% of the corporate stock or voting securities or partnership

interests of Tenant shall be deemed a prohibited assignment of this Lease.

**Section 13.2.** Landlord's consent to any assignment shall not be deemed to have been given by Landlord's acceptance of the payment of rent from a party other than the Tenant. Landlord's approval of an assignment shall not be construed as approval of any subsequent assignment.

**Section 13.3.** In the event of any assignment of this Lease made with or without Landlord's consent, unless otherwise expressly agreed to by Landlord, Tenant shall nevertheless remain liable for the performance of all of the terms, conditions and covenants of this Lease and shall require any assignee to execute and deliver to Landlord an assumption of liability agreement in form satisfactory to Landlord, including an assumption by the assignee of all of the obligations of Tenant and the assignee's ratification of, and agreement to be bound by, all the provisions of this Lease. In the event of any default by an assignee of Tenant or any successor of Tenant in the performance of any of the terms hereof, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against such assignee or successor. Landlord may consent to any subsequent assignment of this Lease or amendments or modifications to this Lease with assignees of Tenant without notifying Tenant and without obtaining Tenant's consent, and such action shall not relieve Tenant of liability under this Lease.

**Section 13.4.** Landlord shall be entitled to, and Tenant shall promptly remit to Landlord, any profit that may inure to the benefit of Tenant as a result of any assignment of this Lease not consented to by Landlord.

**Section 13.5.** Subject to the use requirements provided in Article 5, above, and Section 13.6, below, Landlord hereby grants its consent and approval to the subleasing by Tenant of any residential rental unit to end users of such residential rental unit. All subleases shall be under, subject and subordinate to the provisions of this Lease and, subject to any applicable non-disturbance agreement, shall, unless Landlord otherwise agrees in writing, provide for a termination date not later than the date on which the Term expires.

**Section 13.6.** In order to ensure that Tenant complies with Section 5.1, above, regarding the obligation to maintain at least thirty percent (30%) of the total residential rental unit composition as Affordable Units, Landlord will carry out subtenant income certifications and unit inspections annually. Landlord will review the incomes and sublease agreements of subtenants occupying Affordable Units for eligibility ("**Income Certification**") based on the following documentation which is required to be submitted to Landlord by Tenant:

- (i) Sublease agreements with subtenants occupying Affordable Units;
- (ii) Annual rent roll for all of Tenant's subtenants at the Premises;

(iii) Income and asset third party verifications and/or source documents regarding subtenants occupying Affordable Units, including but not limited to:

(a) Employment income documented through two months of pay-stubs;

(b) Payments in lieu of earnings (e.g. unemployment and disability compensation, worker's compensation, severance pay, general assistance, earned income tax credits, etc.);

(c) Periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, etc.; and

(d) Other assets.

**Section 13.7.** Tenant must comply with the following obligations relative to any sublease to a subtenant for an Affordable Unit:

(i) The initial lease for any such subtenant shall be for a minimum term of one (1) year, unless otherwise agreed to between Landlord and Tenant;

(ii) Tenant's selection of any subtenant shall be in accordance with all Applicable Laws including, but not limited to, the Commonwealth's anti-discrimination laws and regulations, the City's anti-discrimination laws and regulations and the federal Fair Housing Act (42 U.S. Code § 3601, et seq.);

(iii) As AMI statistics are published, Tenant may adjust rents annually for all subtenants of Affordable Units or as subtenants vacate an Affordable Unit and a new subtenant is selected;

(iv) Tenant shall give a minimum of forty-five (45) days written notice to any subtenant of an Affordable Unit of any increase in rent; and

(v) Any subtenant of an Affordable Unit who initially qualified for occupancy but subsequently earns income that exceeds the qualifying amount may remain in the Affordable Unit and pay rent for such Affordable Unit.

**Section 13.8.** Unit sizes, features and finishes for all units must be consistent throughout the development including the Affordable Units.

**Section 13.9.** Tenant must submit a detailed plan and strategy to market the residential units within the immediate community to Landlord prior to entering into any sublease.

**ARTICLE 14**  
**BONDS; RELEASE AND WAIVER OF LIENS**

**Section 14.1.** Tenant agrees that every contract for the construction, installation, alteration, repair of or addition to the Improvements or Alterations where the estimated cost shall exceed Ten Thousand Dollars (\$10,000.00) shall contain a provision obligating the contractor to make prompt payment for all material furnished, labor supplied or performed, rental for equipment employed and services rendered by public utilities in or in connection with the construction, alteration, repair of or addition to the Improvements or Alterations, whether or not the said material, labor, equipment or services enter into and become component parts of the Improvements or Alterations. Each such contract shall obligate the contractor to furnish Tenant, prior to the date on which such contractor commences work under such contract, with a bond as provided in the Redevelopment Agreement for the prompt payment by such contractor of any amounts due for materials, supplies, labor, services and equipment. The provisions of each such contract shall be construed for the benefit of the parties in interest as set forth in Section 11 (a) (4-1) of the Urban Redevelopment Law, 35 P.S. § 1711 (a)(4-1).

**Section 14.2.** Tenant will not create, will not permit to remain and will, within (30) days after notice of the filing thereof, pay or cause to be paid in full or cause to be removed of record by bonding over the same, discharge, or by order of a court of competent jurisdiction, at Tenant's sole cost and expense, all liens, encumbrances and charges upon the Premises or the Improvements or any part of either or the income therefrom, arising out of the ownership, lease, use or occupancy of the Premises or the Improvements or any part of either or the income therefrom, or by reason of any labor or materials furnished or claimed to have been furnished, or by reason of any construction, alteration, addition, repair or demolition of any part of the Premises or the Improvements.

**Section 14.3.** Nothing contained in this Lease shall be construed in any way as constituting the consent or request of Landlord, express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific Alteration, addition, improvement or repair to the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any lien against the interest of the Landlord in the Premises or any part thereof.

**ARTICLE 15**  
**SURRENDER OF PREMISES**

**Section 15.1.** At the expiration or earlier termination of the Term, Tenant shall promptly surrender, in the same condition, order and repair in which they are required to be kept throughout the term hereof, the Premises and all Improvements, Alterations and additions thereto, and all fixtures and equipment servicing the Premises, ordinary wear and tear excepted, free and clear of all occupancies, lettings, liens and encumbrances. Tenant shall also execute all legal instruments necessary to document the transfer of the Improvements and any buildings on the Premises if necessary. Tenant's obligations under this Section shall survive the expiration or sooner termination of the Term of this Lease.

**Section 15.2.** If Tenant, or any person claiming through Tenant, shall continue to occupy the Premises after the expiration or earlier termination of the Term or any renewal thereof, such occupancy shall be deemed to be under a month-to-month tenancy under the same terms and conditions set forth in this Lease; except, however, that the Fixed Minimum Rent during such continued occupancy shall be 1.50 times the amount due in the last year of the Term. Anything to the contrary notwithstanding, any holding over by Tenant without Landlord's prior written consent shall constitute a default hereunder and shall be subject to all the remedies set forth in Article 23 hereof.

**Section 15.3.** Any personal property of Tenant which shall remain on the Premises after the expiration or earlier termination of this Lease may, at the option of the Landlord, be deemed to have been abandoned by Tenant and may either be retained by Landlord as its property or be disposed of without accountability in such manner as Landlord may see fit. If Landlord disposes of such property, Tenant shall pay to Landlord, as Additional Rent under this Lease, all costs incurred in connection with such disposal.

**Section 15.4.** Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant which shall remain on the Premises after the expiration or earlier termination of this Lease and Tenant hereby releases Landlord from any claims for such loss or damage.

## **ARTICLE 16** **INDEMNIFICATION**

**Section 16.1.** Tenant for itself, and its successors and assigns, agrees to indemnify, defend and hold harmless Releasees from and against any and all suits, claims, causes of action, actions, or proceedings of any kind, liabilities, losses, costs and expenses (including without limitation, experts' fees and attorneys' fees), of every kind (whether or not arising from the negligence of Releasees, except losses arising from the gross negligence or willful misconduct of Releasees for which Landlord agrees to indemnify, defend and hold harmless Tenant from and against any and all suits, claims, causes of action, actions and proceedings of any kind, liabilities, losses, costs and expenses [including, without limitation, experts' fees and attorneys' fees]),

relating to or arising in connection with:

(i) any act or omission of Tenant, its agents, representatives, directors, officers, employees, members, contractors, subcontractors, licensees, tenants, subtenants, or invitees, either in connection with any construction in, on or about the Premises, the Improvements, or any street, alley, sidewalk, curb, passageway, or space adjacent to, above or below the Premises or the Improvements;

(ii) the performance of any construction or other work or thing done, or omitted, in or on the Premises or the Improvements;

(iii) any use, nonuse, possession, occupation, condition, operation, maintenance, repair, replacement, alteration, or management of the Premises or Improvements;

(iv) any accident, injury, death or damage to any person or property:

(a) in or on the Premises or the Improvements; or

(b) in or on any street, sidewalk, curb, passageway, walkway or space adjacent to the Premises or the Improvements;

(v) any breach, violation or nonperformance of any covenant, term or condition of this Lease to be performed or observed by Tenant, or of any agreements of record concerning the Premises, or of any restrictions of record or of any Applicable Laws affecting the Premises, the Improvements or any part of either, or the ownership, occupancy or use thereof, or the presence, use, handling, removal and/or disposal of Hazardous Substances in, on, to or from the Premises or the Improvements;

(vi) any encroachment of the Improvements upon property adjoining the Premises; and

(vii) any tax attributable to the execution, delivery or recording of this Lease.

**Section 16.2.** In case any action or proceeding is brought against Releasees, or any of them, by reason of any such matter referred to in Section 16.1, Tenant, upon written notice from the applicable Releasee, shall at Tenant's sole cost and expense, resist or defend such action or proceeding by counsel reasonably approved by the respective Releasee in writing, such approval not to be unreasonably withheld, conditioned or delayed; provided that no approval of counsel shall be required in each instance where the action or proceeding is resisted or defended by counsel of an insurance carrier obligated to resist or defend such action or proceeding, and further provided that Releasees, or any of them, may engage at its expense its own counsel to



participate in the defense of any such action.

**Section 16.3.** Notwithstanding anything contained in this Lease to the contrary, nothing in this Lease shall waive, or be construed to waive, any power or authority of the Landlord under all Applicable Laws.

**Section 16.4.** The provisions of this Article as they apply to occurrences, or actual or contingent liabilities, arising during the term of this Lease shall survive the expiration or any earlier termination of this Lease.

## **ARTICLE 17** **INSURANCE**

**Section 17.1.** Prior to the entry by Tenant, its officers, agents, representatives, contractors, subcontractors, consultants, subconsultants, employees, licensees, or invitees on the Premises (collectively, the "**Insured**"), and continuing until the Certificate Date, and during the period of any subsequent construction or Alterations on the Premises, the Insured shall maintain or cause to be maintained, a minimum of the following insurance (without in any way affecting the indemnity obligations of Tenant pursuant to this Lease or the Redevelopment Agreement and in addition thereto):

(i) Commercial General Liability: The policy will be provided on Insurance Services Office ("**ISO**") form CG 00 01 04 13 or an equivalent form, include a "Cross Liability" endorsement, name the Landlord, the City, PHDC and their respective officers, directors, employees and agents as Additional Insured and include coverage for all operations performed by or on behalf of the Insured for bodily injury and property damage arising out of:

- Products and Completed Operations
- Premises Operations and Mobile Equipment
- Independent Contractors
- Employees and Volunteers as Additional Insured
- Elevators and/or Escalators (if applicable)
- Blanket Contractual Liability (written and oral and must include liability for employee injury assumed under a contract as provided in the standard ISO policy form)
- No amendment to the definition of an "Insured Contract"
- No sexual abuse and molestation exclusion
- Broad Form Property Damage (including completed operations)
- Coverage for Resulting Damage (Expanded Definition of Occurrence-Property Damage)
- Explosion, Collapse and Underground Hazards

Personal Injury and Advertising Injury  
No Exclusions for development, construction, building conversion, etc. (if applicable)  
No Exclusions for residential construction with respect to the work to be completed by the Insured (if applicable)

- The following minimum limits will be provided:

\$2,000,000 Each Occurrence (combined single limit for bodily injury (including death) and property damage)  
\$2,000,000 Personal and Advertising Injury  
\$4,000,000 General Aggregate (other than Products/Completed Operations)  
\$4,000,000 Products/Completed Operations Aggregate (10 Year Term)

- The General Aggregate Limit must apply on a Per Project basis.
- The definition of "occurrence" must be expanded via endorsement to state the following:

"Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions. Faulty workmanship in "your work" is not an "occurrence" but "property damage" that is ancillary and accidental damage caused by faulty workmanship in "your work" is considered an "occurrence" if the following conditions are met:

(a) faulty workmanship in "your work" causes "property damage" to property other than "your work;" and

(b) such "property damage" was not expected or intended by you or the persons performing "your work."

(ii) Workers' Compensation and Employer's Liability Insurance: The Insured will obtain a workers' compensation policy, which provides benefits in accordance with the statutory requirements of the Commonwealth and includes "all states" coverage or at least coverage in all other states in which the Insured performs work or through which the Insured's employees travel. This policy will also include coverage for United States Longshoremen and Harbor Workers (if applicable) and employer's liability. The following minimum employer's liability limits will be provided:

\$1,000,000 Each Accident                      Bodily Injury by Accident

\$1,000,000 Each Employee  
\$1,000,000 Policy Limit

Bodily Injury by Disease  
Bodily Injury by Disease

- Coverage should cover all individuals including sole proprietors, partners, members, officers, and volunteers providing services on behalf of the Insured.

(iii) Automobile Liability Insurance: The policy will name Landlord, the City, PHDC, and their respective officers, directors, employees and agents as Additional Insured and cover liability arising out of the use of all owned, non-owned and hired automobiles (or symbol 1 - Any Auto) with the following minimum coverages:

\$1,000,000 Per Occurrence (combined single limit for bodily injury (including death) and property damage)

- For Contractor(s) involved in the transportation of hazardous material, include the following endorsements: MCS-90 and ISO-9948

- Contractual Liability Coverage (including liability for employee injury assumed under a contract as provided in the standard ISO policy form)

- Coverage for all owned automobiles will be waived if the Insured does not own any automobiles so long as the Insured provides Landlord with a letter stating that the Insured does not own any automobiles. The letter must be on company letterhead and executed by an individual authorized to make such a representation on behalf of the Insured. When the Insured does not own any automobiles, coverage for non-owned and hired automobiles must be endorsed to the commercial general liability policy or provided under a separate non-owned and hired automobile liability policy.

(iv) Professional Liability: Where services provided involve inspection, design, consulting and/or other professional services, the Insured will obtain professional liability insurance with a minimum policy limit of \$5,000,000 per claim and \$5,000,000 aggregate with a deductible not to exceed \$50,000. The definition of "Covered Services" shall include those services outlined in the Insured's contract. This insurance shall extend to the Insured and its legal representatives in the event of death, dissolution or bankruptcy, and coverage provided will cover all actual or alleged acts, errors and omissions arising out of the professional services rendered by the Insured, and/or its agents, employees or any person for whom the Insured is responsible in the performance of the services under the Insured's contract as well as liability assumed under that contract. The retroactive date must be on or prior to the date that the Insured commences its professional services. The Insured will also obtain tail coverage, an extended reporting period, or maintain its current coverage for occurrences

happening during the performance of this Lease for at least two (2) years after the Certificate Date.

(v) Pollution Liability: Where services provided involve the testing, removal or cleanup of any environmental contaminant or pollutant, the Insured will obtain pollution liability insurance with a minimum limit of \$5,000,000 per claim and \$5,000,000 annual aggregate. The policy will name Landlord, the City, PHDC, and their respective officers, directors, employees and agents as Additional Insured. A "Claims-Made" form may be acceptable if coverage cannot be obtained on an "Occurrence" form. The Insured must submit a letter explaining why coverage on an occurrence basis cannot be obtained. If coverage is provided on a "Claims-Made" basis, the Insured must maintain coverage for occurrences happening during the performance of this Lease for at least two (2) years after the Certificate Date by obtaining tail coverage, an extended reporting period, or maintaining its current coverage. The policy must not exclude asbestos, lead, silica, mold/fungus, oil, oil-related chemicals, petroleum, petroleum-related chemicals, or any other environmental contaminant or pollutant, which may be encountered in the testing, removal or cleanup. In lieu of providing a separate pollution liability insurance policy, coverage that satisfies this subsection (v) may be endorsed to the commercial general liability policy.

(vi) Excess/Umbrella Liability: Excess/Umbrella Liability Insurance with a minimum limit of \$10,000,000 for each occurrence and the annual aggregate amount that will follow form over the commercial general liability, automobile liability, and employer's liability insurance policies. The policy will name Landlord, the City, PHDC, and their respective officers, directors, employees and agents as Additional Insured.

(vii) At least twenty (20) days prior to the date on which the foregoing insurance must be in effect, the Insured shall furnish the Landlord with a certificate of insurance satisfactory to the Landlord evidencing the foregoing insurance in compliance with the requirements set forth in this Article. The insurance policies must provide for at least thirty (30) days prior written notice to be given to Landlord in the event that coverage is materially changed, cancelled or non-renewed or once any policy limits have been exhausted by fifty percent (50%). In the event of material change, cancellation or non-renewal of coverage(s), the Insured must replace the coverage(s) to comply with this Lease to prevent a lapse of coverage for any time period during the Term of this Lease. As soon as copies of the policies are available, Tenant shall furnish to the Landlord and City certified copies thereof, either by (a) sending such policies to the Landlord and City and/or to their designees, or (b) making the policies available to the Landlord and City at Tenant's principal place of business provided that Tenant pays all the costs and expenses incurred by the Landlord and City and their designees (including, but not limited to, travel and hotel expenses) in connection with the review of the policies at Tenant's principal place of business, and provided further that Tenant shall duplicate such portions of the policies as the Landlord, City or their designees may request. The Landlord and City and their

designees agree to treat the policies or portions thereof as confidential proprietary information to the extent permitted under law.

(viii) Tenant will obtain Builder's Risk Insurance on an "all risk" basis (including collapse) on a completed value (nonreporting) form for full replacement value covering the interest of Tenant, its contractors and subcontractors in all work incorporated into the Improvements and all materials to be incorporated therein with no exclusion for terroristic acts. In the event that the Improvements or any portion thereof shall be damaged or destroyed by any casualty prior to the Certificate Date with respect to said portion of the Improvements, Tenant shall, at its sole cost and expense, repair, restore, and reconstruct the damaged or destroyed portion of the Improvements in such a manner that, upon the completion of such repairs, restoration and reconstruction, such Improvements shall conform to the controls established by the Redevelopment Agreement and to the provisions of this Lease.

**Section 17.2.** During the period from the Certificate Date through the expiration of the Term of this Lease, Tenant shall maintain or cause to be maintained a minimum of the following insurance (without in any way affecting the indemnity obligations of Tenant pursuant to this Lease or the Redevelopment Agreement and in addition thereto):

(i) Property insurance on the Improvements and contents on an "all risk" basis or on ISO Special Form, including coverage for boiler and machinery, including earthquake to the extent available, valued at replacement cost (full insurable value of the Improvements and contents without deduction for depreciation), not have an exclusion for terroristic acts, and with no penalty of coinsurance. Should the Premises be located in a zone identified by the Federal Emergency Management Agency as a flood hazard area, flood insurance shall be maintained in an amount not less than the maximum available under the National Flood Insurance Program.

At least once every (5) years, but more frequently if in the Landlord's judgment the Premises is unusually rapidly appreciating in value, the Tenant shall cause an appraisal of the Premises to be made for the purpose of determining the current replacement cost and shall obtain property insurance for the value set forth in the appraisal, if the value has increased.

(ii) Commercial General Liability: The policy will be provided on ISO form CG 00 01 04 13 or an equivalent form, include a "Cross Liability" endorsement, name the Landlord, the City, PHDC, and their respective officers, directors, employees and agents as Additional Insured and include coverage for all operations performed by or on behalf of Tenant for bodily injury and property damage arising out of:

Products and Completed Operations

Premises Operations and Mobile Equipment  
Independent Contractors  
Employees and Volunteers as Additional Insured  
Elevators and/or Escalators (if applicable)  
Blanket Contractual Liability (written and oral and must include liability for employee injury assumed under a contract as provided in the standard ISO policy form)  
No amendment to the definition of an "Insured Contract"  
No sexual abuse and molestation exclusion  
Broad Form Property Damage (including completed operations)  
Coverage for Resulting Damage (Expanded Definition of Occurrence-Property Damage) (if applicable)  
Explosion, Collapse and Underground Hazards (if applicable)  
Personal Injury and Advertising Injury  
No Exclusions for development, construction, building conversion, etc. (if applicable)  
No Exclusions for residential construction with respect to the work to be completed by the Tenant (if applicable)

- The following minimum limits will be provided:

\$1,000,000 Each Occurrence (combined single limit for bodily injury (including death) and property damage)  
\$1,000,000 Personal and Advertising Injury  
\$2,000,000 General Aggregate (other than Products/Completed Operations)  
\$1,000,000 Products/Completed Operations Aggregate

- The General Aggregate Limit must apply on a Per Project basis.

• The definition of "occurrence" must be expanded via endorsement to state the Following (if applicable):

"Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions. Faulty workmanship in "your work" is not an "occurrence" but "property damage" that is ancillary and accidental damage caused by faulty workmanship in "your work" is considered an "occurrence" if the following conditions are met:

(a) faulty workmanship in "your work" causes "property damage" to property other than "your work;" and

(b) such "property damage" was not expected or intended by you or the persons performing "your work."

(iii) Workers' Compensation and Employer's Liability Insurance: Tenant will obtain a workers' compensation policy, which provides benefits in accordance with the statutory requirements of the Commonwealth and includes "all states" coverage or at least coverage in all other states in which Tenant performs work or through which Tenant's employees travel. This policy will also include coverage for United States Longshoremen and Harbor Workers (if applicable) and employer's liability. The following minimum employer's liability limits will be provided:

\$100,000 Each Accident	Bodily Injury by Accident
\$100,000 Each Employee	Bodily Injury by Disease
\$500,000 Policy Limit	Bodily Injury by Disease

- Coverage should cover all individuals including sole proprietors, partners, members, officers, and volunteers providing services on behalf of the Tenant.

(iv) Automobile Liability Insurance: The policy will name Landlord, the City, PHDC, and their respective officers, directors, employees and agents as Additional Insured and cover liability arising out of the use of all owned, non-owned and hired automobiles (or symbol 1 - Any Auto) with the following minimum coverages:

\$1,000,000 Per Occurrence (combined single limit for bodily injury (including death) and property damage)

- For Contractor(s) involved in the transportation of hazardous material, include the following endorsements: MCS-90 and ISO-9948

- Contractual Liability Coverage (including liability for employee injury assumed under a contract as provided in the standard ISO policy form)

- Coverage for all owned automobiles will be waived if Tenant does not own any automobiles so long as Tenant provides Landlord with a letter stating that the Tenant does not own any automobiles. The letter must be on company letterhead and executed by an individual authorized to make such a representation on behalf of Tenant. When Tenant does not own any automobiles, coverage for non-owned and hired automobiles must be endorsed to the commercial general liability policy or provided under a separate non-owned and hired automobile liability policy.

(v) **Pollution Liability:** Where services provided involve the testing, removal or cleanup of any environmental contaminant or pollutant, the Tenant will obtain pollution liability insurance with a minimum limit of \$2,000,000 per claim and \$2,000,000 annual aggregate. The policy will name Landlord, the City, PHDC, and their respective officers, directors, employees and agents as Additional Insured. A "Claims-Made" form may be acceptable if coverage cannot be obtained on an "Occurrence" form. Tenant must submit a letter explaining why coverage on an occurrence basis cannot be obtained. If coverage is provided on a "Claims-Made" basis, Tenant must maintain coverage for occurrences happening during the performance of this Lease for at least two (2) years after the completion of the services by obtaining tail coverage, an extended reporting period, or maintaining its current coverage. The policy must not exclude asbestos, lead, silica, mold/fungus, oil, oil-related chemicals, petroleum, petroleum-related chemicals, or any other environmental contaminant or pollutant, which may be encountered in the testing, removal or cleanup. In lieu of providing a separate pollution liability insurance policy, coverage that satisfies this subsection (v) may be endorsed to the commercial general liability policy.

(vi) **Excess/Umbrella Liability:** Excess/Umbrella Liability Insurance with a minimum limit of \$5,000,000 for each occurrence and the annual aggregate amount that will follow form over the commercial general liability, automobile liability and employer's liability insurance policies. The policy will name Landlord, the City, PHDC, and their respective officers, directors, employees and agents as Additional Insured.

(vii) **Garage Keepers Legal Liability** for subtenants' or customers' cars for fire, theft, collision, explosion, riot, civil commotion, malicious mischief and vandalism covering automobiles operated in or parked in the automobile parking facilities. Such policy or policies shall be in an amount not less than \$1,000,000.

(viii) **Cyber Liability or Security and Privacy Liability Insurance:** Cyber liability or security and privacy liability insurance to cover third party liability arising out of: (i) breach of privacy, inclusive of confidential and proprietary business information; (ii) intellectual property, copyright, trademark, trade secret, and/or patent infringements; (iii) Health Insurance Portability and Accountability Act violations; and/or (iv) other breaches of personally identifiable information, proprietary business information, and/or protected health information, that may arise from the Tenant's obligations under this Lease or with respect to the personal identifiable information that Tenant will obtain from its subtenants. The limit of liability for each claim and the annual aggregate will be \$3,000,000. Privacy breach notification and credit monitoring must be included in the above. The policy will name the Landlord, the City, PHDC, and their respective officers, directors, employees and agents as Additional Insured.

(ix) **Builder's Risk:** At all times during which repairs or Alterations are being made to the Premises (other than routine maintenance and repair), Tenant shall obtain builder's



risk insurance on an all risk basis (including collapse) with a limit that covers the full completed value of the repair or Alteration project. Coverage must extend to materials that will become part of the completed repair or Alteration project (on-site and off-site) and in transit, not exclude terroristic acts, provide that permission to occupy will be granted, and be for an agreed amount/no coinsurance.

(x) Such other insurance in amounts as the Landlord and City in their respective sole judgment deem advisable for protection against claims, liabilities and losses arising out of or connected with the use and operation of the Improvements; provided, however, that if Tenant does not agree that such additional coverage is necessary, Tenant shall submit a written objection to the Landlord and City within thirty (30) days after the Landlord's or City's request for such additional coverage, and thereafter the parties shall attempt to resolve the dispute in good faith during the thirty (30) day period following Tenant's objection. If the parties are unable to resolve their dispute within said thirty (30) day period, then Landlord shall have the right to terminate this Lease. If Tenant fails to object to the Landlord's or City's request for additional coverage in accordance with the thirty (30) day period as set forth above, Tenant shall be deemed to have irrevocably waived its right to object to the Landlord's and City's request and Tenant shall promptly comply therewith.

(xi) At least twenty (20) days prior to the date on which the foregoing insurance must be in effect, Tenant shall furnish the Landlord with a certificate of insurance satisfactory to the Landlord evidencing the foregoing insurance in compliance with the requirements set forth in this Article. The insurance policies must provide for at least thirty (30) days prior written notice to be given to Landlord in the event that coverage is materially changed, cancelled or non-renewed or once any policy limits have been exhausted by fifty percent (50%). In the event of material change, cancellation or non-renewal of coverage(s), Tenant must replace the coverage(s) to comply with this Lease to prevent a lapse of coverage for any time period during the term of this Lease. As soon as copies of the policies are available, Tenant shall furnish to the Landlord and City certified copies thereof, either by (a) sending such policies to the Landlord and City and/or to their designees, or (b) making the policies available to the Landlord and City at Tenant's principal place of business provided that Tenant pays all the costs and expenses incurred by the Landlord and City and their designees (including, but not limited to, travel and hotel expenses) in connection with the review of the policies at Tenant's principal place of business, and provided further that Tenant shall duplicate such portions of the policies as the Landlord, City or their designees may request. The Landlord and City and their designees agree to treat the policies or portions thereof as confidential proprietary information to the extent permitted under law.

**Section 17.3.** During the period from the Certificate Date through the expiration of the Term of this Lease, if the Tenant retains an Insured to perform work at the Premises, the Insured will provide and maintain in force:

(i) The types of insurance listed in Section 17.2 subsections (ii) through (vi), (x) and (xi), below, Section 17.4 through 17.9, below, and Section 17.13, below.

(ii) Where services provided involve inspection, design, consulting and/or other professional services, the Insured will obtain professional liability insurance with a minimum policy limit of \$1,000,000 per claim and \$2,000,000 aggregate with a deductible not to exceed \$50,000. The definition of "Covered Services" shall include those services outlined in the Insured's contract. This insurance shall extend to the Insured and its legal representatives in the event of death, dissolution or bankruptcy, and coverage provided will cover all actual or alleged acts, errors and omissions arising out of the professional services rendered by the Insured, and/or its agents, employees or any person for whom the Insured is responsible in the performance of the services under the Insured's contract as well as liability assumed under that contract. The retroactive date must be on or prior to the date that the Insured commences its professional services. The Insured will also obtain tail coverage, an extended reporting period, or maintain its current coverage for occurrences happening during the performance of this Lease for at least two (2) years after the completion of the services outlined in the Insured's contract.

**Section 17.4.** All coverages identified in this Article must be provided by an insurance company authorized to do business in the Commonwealth and with a minimum A.M. Best Rating of A- Class VIII. All insurance, except for workers' compensation and professional liability insurance policies, must be written on an "Occurrence Basis" and not a "Claims-Made Basis." All required minimum limits of insurance can be satisfied by a combination of underlying insurance policies and excess/umbrella liability insurance so long as the excess/umbrella liability insurance follows form over the required underlying insurance policies.

**Section 17.5.** Tenant will provide Landlord with the provisions from each of the required insurance policies or endorsements for each of the required insurance policies for all of the Insured's insurance policies stating the following:

(i) The Insured's insurance coverage is on a primary and non-contributory basis with any insurance carried or administered by Landlord;

(ii) includes coverage for ongoing operations and completed operations;

(iii) Landlord, the City, PHDC, and their respective officers, directors, employees and agents are named as additional insured on a primary and non-contributory basis on all of the insurance policies, except for workers' compensation and professional liability insurance policies, even for claims regarding their partial negligence;

(iv) includes a waiver of subrogation in favor of Landlord and all of the other aforementioned additional insureds;

(v) coverage is applicable separately to each insured against whom a claim is made or suit is brought and there is no "Cross Liability" exclusion on the insurance policies that preclude coverage for suits or claims between the Insured and Landlord or between Landlord and any other insured or additional insured under the insurance policies; and

(vi) no act or omission of Landlord, the City, PHDC, or their respective officers, directors, employees or agents will invalidate coverage, even for claims involving their partial negligence.

(vii) The Insured shall not have a Self-Insured Retention ("**SIR**") on any policy greater than \$50,000, which is the responsibility of the Insured. If the Insured's policy(ies) has a SIR exceeding this amount, approval must be received from Landlord prior to starting work. In the event any policy includes a SIR, the Insured is solely responsible for payment within the SIR of their policy(ies) and the Additional Insured requirements specified herein shall be provided within the SIR amount(s).

**Section 17.6.** Endorsement forms required include CG 20 01, CG 20 10 and CG 20 37 as published by the ISO or on equivalent forms that are satisfactory to Landlord.

**Section 17.7.** The Premises address must be identified on all Certificates of Insurance.

**Section 17.8.** Certificates of Insurance must be addressed to: Philadelphia Redevelopment Authority, 1234 Market Street, 16th floor, Philadelphia, PA 19107.

**Section 17.9.** Landlord reserves the right to request and obtain complete copies of the Insured's insurance policies. Insurance requirements are subject to the periodic review by Landlord. Any failure, actual or alleged, on the part of Landlord to monitor or enforce compliance with any of the insurance requirements will not be deemed as a waiver of any rights on the part of Landlord. During the Term of the Lease, the Landlord shall have the right to require additional types of insurance or higher limits if, in its sole discretion, the potential risk warrants it.

**Section 17.10.** Subject to any insurance requirements imposed by any leasehold mortgagee, Tenant shall not permit separate insurance to be carried which relates to the Premises and is concurrent in form or contributing in the event of loss with that required to be maintained under this Lease, or increase or permit to be increased the amounts of any then existing insurance relating to the Premises by securing an additional policy or additional policies without including the applicable parties required in this Article as additional insured parties. Tenant shall

immediately notify such parties whenever such separate insurance is obtained and deliver to such applicable parties certified copies or duplicate originals of such policies (as required in this Section and in accordance with the procedures set forth herein) and certificates evidencing the same.

**Section 17.11.** The insurance requirements set forth in this Article shall in no way be intended to modify, limit or reduce the indemnification obligations of Tenant in this Lease or to be construed to be a limitation of the liability on the part of the Tenant. The carrying of the insurance described shall in no way be interpreted as relieving the Tenant of any responsibility or liability under the Lease.

**Section 17.12.** If the Landlord or City do not approve any aspect of the above described insurance coverage which is pursuant to the express terms of this Article to be "satisfactory to the Landlord and City," they or either of them shall provide written notice thereof to Tenant. Upon Tenant's receipt of such objection, Tenant, the Landlord and City shall during the sixty (60) days following the date of such objection attempt in good faith to resolve the dispute. If the parties are unable to resolve their dispute within such sixty (60) days, then the Landlord shall have the right to terminate this Lease.

**Section 17.13.** The Insured, for itself and its respective insurers, hereby releases the Landlord, the City, and PHDC from any and all claims, demands, actions and causes of action (including, without limitation, subrogation claims), for loss or damage covered by any of the insurance maintained by the Insured, even if the loss or damage shall have been caused by the fault or negligence of the Landlord, the City and/or PHDC, or anyone for whom the Landlord, the City, and/or PHDC may be responsible. If any of the policies of insurance required under this Lease require an endorsement to provide for the waiver of subrogation, then the named insured of such policies will cause them to be so endorsed.

## **ARTICLE 18**

### **LEASEHOLD MORTGAGE**

**Section 18.1.** Notwithstanding any provisions of this Lease to the contrary:

(i) Provided Tenant notifies Landlord in writing at least thirty (30) days prior to closing on any proposed financing, Tenant may, from time to time, grant to any bank, savings and loan association, commercial credit company, nationally recognized investment company or other institutional, nonprofit, governmental, quasi-governmental or governmental sponsored entity lender providing financing or refinancing to Tenant with respect to the Premises a mortgage lien encumbering Tenant's leasehold interest, or any portion thereof, together with an assignment of leases and rents and a security interest in any personal property owned by Tenant, in order to secure the repayment of such financing, including interest thereon, and the

performance of all of the terms, covenants and agreements on the Tenant's part to be performed or observed under all agreements executed in connection with such financing or refinancing (collectively, a "**Leasehold Mortgage**"; and each holder of a Leasehold Mortgage, a "**Leasehold Lender**"). No such Leasehold Mortgage, lien or security interest shall attach to Landlord's interest in this Lease or Landlord's interest in the Premises or to any personal property owned by Landlord.

(ii) Tenant shall give Landlord prompt notice of the execution and recording of each Leasehold Mortgage, together with contact information for notices to the Leasehold Lender (such notice and/or any notice given by Lender to Landlord of its contact information, collectively, the "**Lender Notice**"). Tenant promptly shall furnish Landlord with a complete copy of each Leasehold Mortgage (including all documents and instruments comprising the Leasehold Mortgage) and all amendments, extensions, modifications and consolidations thereof, certified as such by Tenant.

(iii) After receipt of a Lender Notice, Landlord shall give such Leasehold Lender, in the manner provided by the notice provisions of this Lease, a copy of each notice of default given by Landlord to Tenant, at the same time that Landlord gives such notice of default to Tenant or promptly thereafter. The Leasehold Lender shall have the right, but shall not have any obligation (except as provided in subsection (iv), below), to cure such default or to cause such default to be cured, within the time periods set out in subsection (iv), below.

(iv) Landlord shall not exercise its right to terminate this Lease following a default by Tenant if:

(a) As to a monetary default, the Leasehold Lender cures such default on or before the date that is the later of (1) thirty (30) days after the date such default is required to be cured by Tenant under the terms of this Lease and (2) thirty (30) days after the date of Landlord's notice to the Leasehold Lender of Tenant's default; and

(b) As to a non-monetary default, (1) Landlord receives written notice from the Leasehold Lender (the "**Lender Cure Notice**"), within sixty (60) days after Leasehold Lender is given Landlord's notice of Tenant's default, that Leasehold Lender agrees to remedy the default, and (2) Lender cures such default on or before the date that is the later of (A) sixty (60) days after the date such default is required to be cured by Tenant under the terms of this Lease, and (B) sixty (60) days after the date Leasehold Lender is given notice of Tenant's default, provided, however, that if any non-monetary default is not capable of being remedied by the Leasehold Lender within such time period, Leasehold Lender shall have such reasonable greater period of time as is necessary to cure such default if Leasehold Lender shall:

(I) commence to remedy the default within such period and

shall diligently continue to prosecute such cure to completion, or

(II) if possession of the leasehold interest in the Premises is required in order to cure such default, institutes judicial or non-judicial foreclosure proceedings within such sixty (60) day period and diligently prosecutes such proceedings in order to obtain possession directly or through a receiver, and, upon obtaining such possession, commences promptly to cure the default and diligently prosecutes the same to completion, provided that, during the period in which such action is being taken and any foreclosure proceedings are pending, all of the other obligations of Tenant under this Lease, to the extent they are reasonably susceptible to being performed by Leasehold Lender, shall be performed.

(c) If a non-monetary default is not capable of being cured by Leasehold Lender (for example the bankruptcy of Tenant) Landlord shall not terminate this Lease by reason of such incurable default if Leasehold Lender succeeds to the interest of Tenant hereunder within the applicable cure period provided herein and Leasehold Lender cures all other Events of Default in accordance with the remaining provisions of this subsection (iv).

(v) Landlord shall have no liability for the failure to give any notice to a Leasehold Lender; provided, however, Landlord agrees that it shall not exercise any right granted to it pursuant to Article 23 without providing such notice and the opportunity to cure provided herein.

(vi) At any time after the delivery of the Lender Cure Notice, Leasehold Lender may notify Landlord, in writing, that it has relinquished possession of the Premises, or that it will not institute foreclosure proceedings, or, if such proceedings have been commenced, that it has discontinued or will discontinue such proceedings, and that it relinquishes all right to a New Lease (as defined in subsection (viii), below) (the "**Abandonment Notice**"). In such event, Leasehold Lender shall have no further obligation to cure Tenant's default(s). Landlord may, at any time after receipt of such Abandonment Notice or upon Leasehold Lender's failure to comply with the requirements set forth herein above, terminate this Lease in accordance with the terms thereof, without any obligation to give Leasehold Lender a New Lease or any further notice.

(vii) Subject to the preceding Sections, no Leasehold Lender shall have an obligation to cure any default of Tenant under the Lease, or shall become liable under the provisions of this Lease, or any lease executed pursuant to this Article, unless and until such time as it becomes, and then only for as long as it remains, the tenant under the leasehold estate created by this Lease.

(viii) If this Lease is terminated for any reason, or if this Lease is rejected or disaffirmed pursuant to any bankruptcy, insolvency or other law affecting creditors' rights, Landlord shall give prompt notice thereof to each of the then Leasehold Lenders whose contact

information Landlord has received in a Lender Notice, in the manner provided by the notice provisions of this Lease. Landlord, upon written request of any such Leasehold Lender (or if more than one Leasehold Lender makes such request, the Leasehold Lender whose Leasehold Mortgage has the most senior lien), made any time within thirty (30) days after the giving of such notice by Landlord, shall promptly execute and deliver to such Leasehold Lender a new lease of the Premises (the "**New Lease**"), naming such Leasehold Lender as the tenant under this Lease, for the remainder of the Term upon all of the terms, covenants, and conditions of this Lease, except for such provisions that must be modified to reflect such termination, rejection or disaffirmance and the passage of time, if such Leasehold Lender shall pay to Landlord, concurrently with the delivery of such New Lease, all unpaid Rent due under this Lease up to and including the date of the commencement of the term of such New Lease. Leasehold Lender or its designee shall execute and deliver to Landlord such New Lease within thirty (30) days after delivery of such New Lease by Landlord to Leasehold Lender. Upon execution and delivery of such New Lease, Leasehold Lender shall cure or cause to be cured all defaults existing under this Lease which are capable of being cured by such Leasehold Lender or its designee promptly and with diligence after the delivery of such New Lease including completion of the Development Project, and all provisions of the New Lease shall be binding on any Leasehold Lender or assignee that acquires Tenant's interest hereunder.

(ix) The New Lease and the leasehold estate thereby created shall, subject to the inclusion therein of all of the terms and conditions of this Lease, have the same priority as this Lease with respect to any mortgage, including any mortgage or other lien, charge or encumbrance on Landlord's fee estate in the Premises.

(x) If a Leasehold Lender has timely requested a New Lease, Landlord shall not, except as permitted or contemplated by the terms of such subleases, between the date of termination of this Lease and the date of execution of the New Lease, without the written consent of such Leasehold Lender, terminate any sublease of the Premises, disturb the occupancy, interest or quiet enjoyment of any subtenant of the Premises, or accept any cancellation, termination or surrender of such sublease or enter into any lease of all or part of the Premises (other than a new lease with a subtenant of the Premises entitled to a new lease pursuant to the terms of a non-disturbance agreement or similar agreement or except as permitted or contemplated by the terms of any lease with any subtenant), which consent of such Leasehold Lender shall not be unreasonably withheld, conditioned or delayed. Upon the execution and delivery of a New Lease under this Article, all security deposits of subtenants of the Premises and all prepaid rent moneys of subtenants of the Premises that are in Landlord's possession shall be transferred to the tenant under the New Lease, and all such leases that have been made by Landlord, shall be assigned and transferred, without recourse, by Landlord to the tenant named in such New Lease.

(xi) If more than one Leasehold Lender has requested a New Lease, and the

Leasehold Lender whose Leasehold Mortgage had the most senior lien does not execute a New Lease or does not fully comply with the provisions of this Article regarding the delivery of such New Lease, Landlord shall continue to offer, seriatim in order of the priority of their respective Leasehold Mortgages, such New Lease to the remaining requesting Leasehold Lenders, who shall have ten (10) days from the date of receipt of such offer to execute such New Lease and to fully comply with the provisions regarding the delivery of such New Lease, until the earlier of (a) the execution and delivery of a New Lease and (b) the expiration of the offer period for the requesting Leasehold Lender whose lien is most junior. As long as any Leasehold Lender shall have the right to enter into a New Lease with Landlord pursuant to this Section, Landlord shall not, without the prior written consent of all Leasehold Lender(s) that continue to have potential succession rights to a New Lease, terminate any sublease of the Premises, disturb the possession, interest or quiet enjoyment of any subtenant of the Premises, or accept any cancellation, termination or surrender of any such sublease or enter into a lease of all or part of the Premises (except for a New Lease with a Leasehold Lender entitled to such New Lease or a new lease with a subtenant of the Premises entitled to a new lease pursuant to the terms of a non-disturbance agreement or similar agreement). If no Leasehold Lender has the right to be offered a New Lease, Landlord shall be free of all obligations to the Leasehold Lenders and shall be free to lease all or any part of the Premises at Landlord's sole discretion.

(xii) If one or more Leasehold Mortgages is in effect, then, without the prior written consent of every Leasehold Lender that has delivered the Lender Notice to Landlord: (a) this Lease shall not be voluntarily terminated by the parties hereto (nor the Term reduced); and (b) the Premises shall not be voluntarily surrendered by Tenant, and Landlord shall not accept any such surrender of this Premises by Tenant. Notwithstanding the foregoing, Landlord and Tenant may take such action in the event that such arises in connection with an Event of Default for which Leasehold Lender received notice as provided herein and has not cured such Event of Default within the timeframes set forth herein.

(xiii) Landlord's agreement to enter into a New Lease with a Leasehold Lender shall be unaffected by the rejection of this Lease in any bankruptcy proceeding by either Landlord or Tenant. The provisions of this subsection shall survive the termination, rejection or disaffirmance of this Lease and shall continue in full force and effect thereafter to the same extent as if this subsection were a separate and independent contract made by Landlord, Tenant and Leasehold Lenders. The provisions of this subsection are for the benefit of Leasehold Lender and may be relied upon and shall be enforceable by Leasehold Lenders as if Leasehold Lender were a party to this Lease.

(xiv) Until each Leasehold Lender has been given a Lender Cure Notice and this Lease has been terminated, Landlord shall have no right and expressly waives any right arising under applicable Law in and to the rentals, fees, and other amounts payable to Tenant





full and faithful performance of all covenants to be performed by Tenant. If Tenant defaults with respect to any provision of this Lease, including but not limited to the payment of Fixed Minimum Rent or Additional Rent, Landlord may use, apply or retain all or any part of the Security Deposit for the payment of any rent or any other sum due from Tenant or for the payment of any other amount Landlord may spend or become obligated to spend by reason of Tenant's default, or to compensate Landlord for any other loss, cost or damage which Landlord may suffer by reason of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant shall, within fifteen (15) days after written demand, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount and Tenant's failure to do so shall be an Event of Default under this Lease. Landlord shall not be required to keep the Security Deposit separate from its general funds nor pay interest to Tenant.

**Section 19.2.** Unless Landlord is entitled to any remaining portion of the Security Deposit pursuant to the terms of Section 19.1, above, the Security Deposit or any balance of it shall be returned to Tenant (or, at Landlord's option, to the last transferee of Tenant's interest hereunder) at the expiration of the Term and upon Tenant's vacation of the Premises. In the event that Landlord's interest in the Premises is sold or transferred, Landlord may deliver the Security Deposit to the new owner, and upon such delivery, Landlord shall be discharged from further liability with respect to such Security Deposit.

## **ARTICLE 20**

### **QUIET ENJOYMENT**

**Section 20.1.** Tenant, upon paying all rent and other charges herein provided for, and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the term of this Lease without hinderance or molestation by anyone claiming by or through Landlord, subject, however, to the exceptions, reservations and conditions of this Lease.

## **ARTICLE 21**

### **TENANT'S NEGATIVE COVENANTS**

**Section 21.1.** Tenant covenants that it will not:

- (i) vacate or desert the Premises prior to termination of the Lease or permit the same to be empty or unoccupied;
- (ii) occupy the Premises in any manner or for any purpose other than as set forth in Article 5, above;
- (iii) do anything which would result in the cancellation or suspension of, or

increase in the premium of, any fire or other insurance policy carried by Landlord;

(iv) remove any of Tenant's property from the Premises except such as can be carried by Tenant and as would be reasonable and customary for persons occupying similar space to remove in the ordinary course of business.

## **ARTICLE 22** **TENANT'S DEFAULTS**

**Section 22.1.** Any of the following events shall constitute an "**Event of Default**" by Tenant under this Lease:

(i) This Lease is being entered into in conjunction with the Redevelopment Agreement. At any time prior to the Certificate Date, (a) an event of default under the Redevelopment Agreement shall constitute a default under this Lease, and (b) an event of default under this Lease shall constitute a default under the Redevelopment Agreement.

(ii) If Tenant does not pay in full when due and without demand any and all installments of Fixed Minimum Rent or Additional Rent, or any other charges or payments payable by Tenant pursuant to the terms hereof, and shall not cure such failure within ten (10) days after written notice thereof;

(iii) If Tenant violates or fails to perform any term, provision, covenant or warranty of Tenant in this Lease, other than the payment of rent, charge or assessment payable by Tenant, and shall not cure such failure within sixty (60) days after written notice thereof;

(iv) If Tenant shall make a transfer of its assets in fraud of creditors or shall make an assignment for the benefit of creditors or offer a composition or settlement to creditors;

(v) If Tenant shall file a petition under any section or chapter of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof, or there shall be filed against the Tenant a petition in bankruptcy or insolvency or a similar proceeding that is not removed or stayed within sixty (60) days of filing, or Tenant shall be adjudged bankrupt or insolvent in proceeding filed against Tenant;

(vi) If a receiver or trustee shall be appointed for Tenant's leasehold interest in the Premises or for all or substantially all of the assets of Tenant;

(vii) If Tenant's leasehold interest in the Premises shall be levied upon by any sheriff, marshall or constable:

(viii) If Tenant shall abandon or vacate all or any portion of the Premises or fail to take possession thereof as provided in this Lease or if Tenant shall remove any property from the Premises except as permitted by Article 21, above; or

(ix) If, prior to Certificate Date, in accordance with the terms of the Redevelopment Agreement, Tenant shall, without Landlord's prior written consent, do or permit to be done anything which creates a lien upon the Premises.

## **ARTICLE 23**

### **LANDLORD'S REMEDIES**

**Section 23.1.** Upon the occurrence of an Event of Default, Landlord shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever:

(i) charge a late fee of five (5%) percent of any amount owed to Landlord pursuant to this Lease, which is not paid within five (5) days of the date which is set forth in the Lease if a date is specified, or, if a date is not specified, within thirty (30) days of the mailing of a bill thereof by Landlord. If Landlord incurs a penalty in connection with any payment which Tenant has failed to make within the times required in this Lease, Tenant shall pay Landlord in addition to such sums the full payment of such penalty incurred by Landlord;

(ii) terminate this Lease, in which event Tenant shall immediately surrender the Premises to Landlord;

(iii) enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying said Premises or any part thereof and, if Landlord in its sole judgment so elects, relet the Premises on such terms as Landlord may deem advisable, without advertisement and by private negotiations, and receive the rent therefor, Tenant hereby agreeing to pay to Landlord the deficiency, if any, between all rent reserved hereunder and the total rental applicable to the Lease Term hereof obtained by Landlord in re-letting, and Tenant shall be liable for Landlord's expenses in restoring the Premises and all costs incident to such re-letting;

(iv) enter upon the Premises and do whatever Tenant is obligated to do under the terms of this Lease; and Tenant agrees that Landlord shall not be liable for any damages resulting to Tenant from such action, whether caused by negligence of Landlord or otherwise;

(v) enter the Premises and without further demand or notice proceed to distress and sale of the goods, chattels and personal property there found and to levy the rent and other charges herein payable as rent, and Tenant shall pay all costs and officers' commissions

which are permitted by law, including watchmen's wages and sums chargeable to Landlord, and further including commissions charged by the constable or other person making the levy, and in such case all costs, officers' commissions and other charges shall immediately attach and become part of the claim of Landlord for rent, and the tender of rent without said costs, commissions and charges made after the issuance of a warrant of distress, shall not be sufficient to satisfy the claim of Landlord; or

(vi) declare immediately due and payable all rent and other charges and assessments against Tenant due and to become due under this Lease for the balance of the term of this Lease, without regard to any early termination of said Term on account of default. Interest shall accrue on all sums due but unpaid hereunder. Landlord shall in no event be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due upon any reletting.

**Section 23.2.** Tenant agrees to pay Landlord all reasonable costs and expenses incurred by Landlord in the enforcement of this Lease, including without limitation, the reasonable fees of Landlord's attorneys when such attorneys are employed by Landlord to effect collection of any sums due hereunder or to enforce any right or remedy of Landlord.

**Section 23.3.** All rights and remedies of Landlord enumerated in this Article shall be cumulative and none shall exclude any other rights or remedy allowed by law. In addition to the other remedies provided in this Lease, Landlord shall be entitled to seek an injunction restraining a violation or attempted violation of any of the covenants, agreements or conditions of this Lease.

**Section 23.4.** No waiver by Landlord of any breach by Tenant of any of Tenant's obligations, agreements or covenants herein shall be a waiver of any subsequent breach or of any obligation, agreement or covenant, nor shall any forbearance by Landlord to seek a remedy for breach by Tenant be a waiver by Landlord of any rights or remedies with respect to such or any subsequent breach.

## **ARTICLE 24**

### **FIRE OR OTHER CASUALTY**

**Section 24.1.** If the Improvements or any part thereof shall be damaged or destroyed by fire or other casualty prior to the Certificate Date, in accordance with the terms of the Redevelopment Agreement, Tenant shall perform its obligations to repair or restore the Premises in accordance with Article IV of the Redevelopment Agreement.

**Section 24.2.** If the Improvements or any part thereof shall be damaged or destroyed by fire or other casualty after the Certificate Date in accordance with the terms of the

Redevelopment Agreement, Tenant shall determine whether to terminate this Lease or restore the Improvements. If Tenant elects to terminate this Lease, Tenant shall surrender the Premises to Landlord in accordance with Article 15, above. If Tenant elects to restore the Premises, Tenant shall: restore the Improvements or any part thereof in accordance with the Redevelopment Agreement (whether or not beyond the Certificate Date) and Article 9, above. Tenant shall make such election within one hundred eighty (180) days after the date of the casualty by written notice to Landlord; if Landlord receives no notice within such time Tenant shall be deemed to have elected to surrender the premises in accordance with Article 15, above. Notwithstanding the foregoing, after any casualty, Tenant shall immediately make the Premises safe and eliminate any dangerous condition.

**Section 24.3.** If Tenant elects to restore the Improvements in accordance with Section 24.1, above, Tenant shall commence such restoration within thirty (30) days after the date of the election to restore and diligently proceed to completion of such restoration.

## **ARTICLE 25** **CONDEMNATION**

**Section 25.1.** If the whole of the Premises shall be condemned or taken under any statute or by right of eminent domain, or by private purchase in lieu thereof, then the term of this Lease shall cease and terminate on the date when such taking or purchase occurs. The rent shall be adjusted as of the time of such termination and any rent paid for a period thereafter shall be refunded. In the event only a portion of the Premises is taken or purchased in lieu of condemnation, Landlord may elect to terminate this Lease from the date when possession is taken thereunder pursuant to such proceeding or purchase or Landlord may elect to repair and restore, at its own expense, the portion not taken and the rent shall be reduced proportionately to the portion of the Premises taken.

**Section 25.2.** In the event of any condemnation or taking as aforesaid, whether in whole or in part, Tenant shall not be entitled to any part of the award paid for such condemnation in excess of the fair market value of the Improvements immediately prior to such condemnation. Landlord is to receive the full amount of such award and Tenant hereby expressly waives any right or claim to any part thereof.

**Section 25.3.** Although all damages in the event of any condemnation are to belong to Landlord, whether such damages are awarded as compensation for diminution in value of the leasehold or of the fee of the Premises, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, provided always, however, that such will not reduce Landlord's award, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's business by reason of the condemnation and for or on account of any cost or loss to which Tenant might be put in removing Tenant's merchandise, furniture, fixtures, leasehold improvements and equipment.

**Section 25.4.** If the condemnor should take only the right to possession for a fixed period of time or for the duration of emergency or other temporary condition, then, notwithstanding anything hereinabove provided, this Lease shall continue in full force and effect without any abatement of rent, but the amounts payable by the condemnor with respect to any period of time prior to the expiration or sooner termination of this Lease shall be paid by the condemnor to Landlord and the condemnor shall be considered a subtenant of Tenant. Landlord shall apply the amount received from the condemnor applicable to the rent due hereunder net of costs to Landlord for the collection thereof toward the amount due from Tenant as rent for that period; and, Tenant shall pay to Landlord any deficiency between the amount paid by the condemnor and the amount of the rent.

## **ARTICLE 26**

### **SUBORDINATION; ATTORNMENT; OFFSET STATEMENT; AND FINANCING**

**Section 26.1.** If any person shall succeed to all or part of Landlord's interest in the Premises, whether by purchase, foreclosure, deed in lieu of foreclosure, power of sale, termination of Lease, or otherwise, and if so requested or required by such successor in interest, Tenant shall attorn to such successor in interest and shall execute such agreement in confirmation of such attornment as such successor in interest shall reasonably request.

**Section 26.2.** At any time and from time to time upon the written request of Landlord or any mortgagee, Tenant within twenty (20) days of the date of such written request, agrees to execute and deliver to the Landlord and/or such mortgagee, without charge and in a form satisfactory to Landlord and/or such mortgagee, a written statement: (i) ratifying this Lease; (ii) confirming the commencement and expiration dates of the term of the Lease; (iii) certifying that Tenant is in occupancy of the Premises, and that Lease is in full force and effect and has not been modified, assigned, supplemented or amended except by such writings as shall be stated; (iv) certifying that all conditions and agreements under this Lease to be satisfied or performed by Landlord have been satisfied or performed except as shall be stated; (v) certifying that Landlord is not in default under the Lease and there are no defenses or offsets against the enforcement of this Lease by Landlord, or stating the defaults and/or defenses claimed by Tenant; (vi) reciting the amount of advance rent, if any, paid by Tenant and the date to which such rent has been paid; (vii) reciting the amount of security deposited with Landlord, if any; and (viii) any other information which Landlord or the mortgagee shall require.

## **ARTICLE 27**

### **ENTIRE LEASE**

**Section 27.1.** This Lease and the Redevelopment Agreement contain all the promises, agreements, conditions, inducements and understandings between Landlord and Tenant relating to the Premises, and there are no promises, agreements, conditions, understandings, inducements,

warranties or representations, oral or written, expressed or implied, between them other than as set forth in this Lease and the Redevelopment Agreement.

**ARTICLE 28**  
**MEMORANDUM OF LEASE**

**Section 28.1.** Landlord and Tenant shall join in the execution of a memorandum of lease in proper form for recording or shall record this Lease in the appropriate office.

**ARTICLE 29**  
**NOTICES**

**Section 29.1.** All notices, demands, requests, consents, certificates, waivers or other communications from either party to the other with respect to this Lease or the Premises shall be in writing and shall be effective if sent by certified or registered United States mail, postage prepaid, return receipt requested or delivered by a nationally recognized courier (i.e. UPS, Federal Express, etc.),

- (i) If to the Landlord, addressed as follows:

Deputy Executive Director, Land  
Philadelphia Redevelopment Authority  
16th Floor  
1234 Market Street  
Philadelphia, PA 19107

with a copy to:

General Counsel  
Philadelphia Redevelopment Authority  
16th Floor  
1234 Market Street  
Philadelphia, PA 19107

- (ii) If to Tenant, addressed as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:



\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other address as the party to receive notice may from time to time designate by written notice to the other in the manner above described; such notice shall be deemed to have been given or served upon the expiration of two business days after mailing in the manner set forth herein or the date of receipt of delivered by a national recognized courier.

**ARTICLE 30**  
**AS-IS CONDITION**

**Section 30.1.** Landlord makes no representation or warranty regarding the physical, including environmental, condition or any other condition of the Premises. Tenant, or its subleasees, if any, occupy the Premises pursuant to this Lease and Tenant acknowledges that Tenant is not relying upon any representation or warranty regarding the physical condition, environmental condition or any other condition of the Premises, none having been given by Landlord.

**ARTICLE 31**  
**MISCELLANEOUS**

**Section 31.1.** If any term or covenant of this Lease or the application thereof to any person or circumstances shall, to any extent, be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining terms and covenants of this Lease, or the application of such term or covenant to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and covenant of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**Section 31.2.** The captions of this Lease are for convenience only, are not a part of this Lease, and do not in any way define, limit or describe the scope, intent or terms of this Lease.

**Section 31.3.** Time is of the essence in this Lease.

**Section 31.4.** The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant, and any use in this Lease of the words "successors and assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives, successors and assigns of any individual Landlord or Tenant.

**Section 31.5.** This Lease shall not be amended except by an instrument in writing

executed by Landlord and Tenant. All approvals and consents required in this Lease shall be provided in writing in order to be effective. No oral representations, whenever made, by any official or employee of Landlord shall be effective to amend the terms of this Lease.

**Section 31.6.** This Lease shall be governed by and construed and governed for all purposes in accordance with the laws of the Commonwealth applicable to contracts executed and wholly performed within such jurisdiction. Any dispute arising hereunder shall be referred to and heard in only a federal or state court located in Philadelphia, Pennsylvania.

**Section 31.7.** The terms, covenants and conditions contained in this Lease shall extend to and be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.

**Section 31.8.** Nothing in this Lease is intended to confer a third-party beneficiary right upon any Person other than the City.

**Section 31.9.** Any and all agreements set forth in this Lease which, by its or their nature, would reasonably be expected to be performed after the termination of this Lease shall survive and be enforceable after such termination. Any and all liabilities, actual or contingent, which shall have arisen in connection with this Lease, shall survive any termination of this Lease. Any express statement of survival contained in any Section of this Lease shall not be construed to affect the survival of any other Section, which shall be determined pursuant to this Section.

**Section 31.10.** This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**Section 31.11.** The transmission of a signed counterpart of this Lease by facsimile or by portable document file ("**PDF**") shall have the same force and effect as delivery of an original signed counterpart of this Lease and shall constitute valid and effective delivery for all purposes. If either party delivers a signed counterpart of this Lease by transmission of a facsimile or PDF, it shall also send promptly thereafter by overnight courier or personal delivery a signed original counterpart of this Lease to the other party, but failure to do so shall not render this Lease void or voidable by either party.

**Section 31.12.** Tenant shall look solely to Landlord's interest in the Premises, including, without limitation, any rents, issues, profits, insurance proceeds or condemnation proceeds, for enforcement of any financial or other obligation of Landlord under this Lease or under applicable law. No other property or other assets of Landlord shall be subject to levy, execution or other enforcement proceeding for the satisfaction of Tenant's remedies or with respect to this Lease, the relationship of Landlord and Tenant or Tenant's use and occupancy of the Premises.

**Section 31.13.** Tenant represents and warrants to Landlord that Tenant has authority to execute, deliver, and perform this Lease, and to take all actions contemplated to be taken by Tenant hereby, including, but not limited to, taking possession of the Premises, constructing Improvements on the Premises, and conducting Tenant's intended use of the Premises (subject, however, to the need to obtain the necessary approvals). There is no pending proceeding to which Tenant is a party, or of which it has been given notice which would materially or adversely affect Tenant's obligations under this Lease. To the best of Tenant's knowledge, there are no actions, suits, investigations, or proceedings pending or threatened to be brought in any court or before any governmental agency which could have a materially adverse effect on the ability of Tenant to conduct the intended use or delay or prohibit possession of the Premises by Tenant, nor are there any unsatisfied judgments or consent decrees which could have any such effect. Tenant is not in default or violation of any order, writ, injunction or decree of any court, governmental department, agency or instrumentality having jurisdiction over Tenant or its property which could have an adverse effect on Tenant's ability to perform its obligations under this Lease.

**Section 31.14.** Except as specifically set forth herein to the contrary, all indemnification, hold harmless and defense obligations of the parties set forth herein shall survive the expiration or termination of this Lease.

**Section 31.15.** All Exhibits attached to this Lease are hereby made a part hereof and incorporated herein by reference.

**Section 31.16.** Notwithstanding anything to the contrary contained in this Lease, the parties' rights and obligations under this Lease shall be in addition to and not in lieu of those under the Redevelopment Agreement.

[SIGNATURES ON FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Lease, as of the date first above written.

**Tenant:**

\_\_\_\_\_, a \_\_\_\_\_  
By: \_\_\_\_\_, its \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Landlord:**

**PHILADELPHIA REDEVELOPMENT  
AUTHORITY**

By: \_\_\_\_\_  
Name: Angel Rodriguez  
Its: Deputy Executive Director, Land

Approved as to Legal Form Philadelphia Redevelopment Authority  By: _____ Attorney
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