

# City of Philadelphia



(Bill No. 100336)

## AN ORDINANCE

Approving a Lease Amendment between Philadelphia Gas Works by Philadelphia Facilities Management Corporation, solely in its capacity as operator and manager of the City-owned Philadelphia Gas Works, and Girard Square A NY LP for certain premises located at 1137 Chestnut Street.

WHEREAS, The Philadelphia Gas Works by Philadelphia Facilities Management Corporation (“PFMC”) desires to enter into a lease amendment (“Lease Amendment”) whereby PFMC, in its capacity as operator and manager of the City-owned Philadelphia Gas Works, under and pursuant to an agreement with the City of Philadelphia dated December 29, 1972, as amended, will rent from Girard Square A NY LP, successor in interest to the City of Philadelphia, Trustee under the Will of Stephen Girard, deceased, acting by the Board of Directors of City Trusts certain premises located at 1137 Chestnut Street for an additional term; and

WHEREAS, Section VIII(3) of the Agreement dated December 29, 1972, as amended, between the City of Philadelphia and Philadelphia Facilities Management Corporation provides in part that leases of real estate by and for the Philadelphia Gas Works shall be submitted to the Philadelphia Gas Commission for its approval and shall be submitted to City Council for its approval by ordinance; and

WHEREAS, The Philadelphia Gas Commission at a meeting duly held on April 26, 2010, approved the Lease Amendment between Philadelphia Gas Works by Philadelphia Facilities Management Corporation and Girard Square A NY LP, successor in interest to the City of Philadelphia, Trustee under the Will of Stephen Girard, deceased, acting by the Board of Directors of City Trusts, under certain terms and conditions, and favorably recommended the transaction to City Council; now therefore

### *THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Pursuant to Section VIII(3) of the Agreement dated December 29, 1972, as amended, between the City of Philadelphia and the Philadelphia Facilities Management Corporation, the City Council does hereby approve the Lease Amendment concerning 1137 Chestnut Street, set forth in Exhibit “A” attached hereto and made a part hereto, between Philadelphia Gas Works by Philadelphia Facilities Management Corporation, and Girard Square A NY LP.

# City of Philadelphia

BILL NO. 100336 continued

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SECTION 2. The Exhibit "A" referred to and incorporated in this Ordinance shall be kept on file by the Chief Clerk of City Council and shall be available to the public for inspection, reading or copying at reasonable times.

# City of Philadelphia

BILL NO. 100336 continued

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EXHIBIT "A"

**EXTENSION AND AMENDMENT AGREEMENT**

**THIS EXTENSION AND AMENDMENT AGREEMENT** (this “Amendment”) is made as of the 1<sup>st</sup> day of August, 2010, by and between **GIRARD SQUARE A NY LP**, a Delaware limited partnership (“Landlord”), the successor-in-interest to TCA GIRARD LP, the successor-in-interest to The City of Philadelphia, Trustee, under the Will of Stephen Girard, Deceased, Acting by the Board of Directors of City Trusts, and **PHILADELPHIA GAS WORKS BY PHILADELPHIA FACILITIES MANAGEMENT CORPORATION**, a Pennsylvania non-profit corporation (“Tenant”).

**Background**

A. Landlord’s predecessor-in-interest and Tenant entered into that certain Lease Agreement dated May 26, 1994 (“Original Lease”), as amended by that certain Agreement of Amendment dated August 1, 2006 (“1<sup>st</sup> Amendment”), (collectively the “Lease”), whereby Tenant leases from Landlord approximately 4,498 rentable square feet in the building located at 1137 Chestnut Street, Philadelphia, Pennsylvania (the “Building”), which Building is a part of the property currently known as “Girard Square”, located between 11<sup>th</sup> and 12<sup>th</sup> Streets and between Market and Chestnut Streets in the city of Philadelphia, Pennsylvania (the “Property”).

B. Landlord and Tenant desire to modify various terms and provisions of the Lease.

NOW, THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Except as otherwise specifically defined in this Amendment, any capitalized terms used herein and not defined shall have the meanings given to them under the Lease.

2. The Lease shall be extended for a term of four (4) years (“Extension Term”) beginning August 1, 2010 (“Extension Term Commencement Date”) and ending July 31, 2014 (“Extension Term Expiration Date”).

3. Any reference to “Lessor” or “Landlord” under the Lease shall hereinafter mean Girard Square A NY LP.

4. Section 23 of the Lease, as amended and replaced in the 1<sup>st</sup> Amendment, is hereby deleted in its entirety and of no further force and effect. Landlord and Tenant hereby acknowledge and agree that notwithstanding anything contained in the Lease to the contrary, the Lease shall terminate as of the Extension Term Expiration Date without notice necessary from either party, unless extended or terminated earlier in accordance with the terms of the Lease.

5. As of the Extension Term Commencement Date, the Rental payable by Tenant in connection with its occupancy of the Premises shall be the following:

<u>Period</u>	<u>Annual Rent</u>	<u>Monthly Rent</u>
08/01/2010 – 07/31/2011	\$ 144,000.00	\$ 12,000.00
08/01/2011 – 07/31/2012	\$ 156,000.00	\$ 13,000.00
08/01/2012 – 07/31/2013	\$ 168,000.00	\$ 14,000.00
08/01/2013 – 07/31/2014	\$ 180,000.00	\$ 15,000.00

Without regard to the applicability of any grace period provided for in the Lease, if the Rental, or any other rent or other charge payable by Tenant to Landlord shall not be paid within five (5) business days of when the same is due and payable, a late payment charge of five percent (5%) of the payment due, shall be Additional Rent payable on demand by Tenant to Landlord. Landlord’s receipt of such Additional Rent shall not be a waiver of Tenant’s default, nor shall its receipt affect any other remedy available to Landlord hereunder or otherwise.

6. Any references relating to notice to Landlord under the Lease, shall be modified to change Landlord address to:

Girard Square A NY LP  
 c/o Phil Rosen  
 SSH Management LLC  
 123 S. Broad Street, 8<sup>th</sup> Floor  
 Philadelphia, PA 19109

With a copy to:

Girard Square A NY LP  
 c/o SSH Real Estate  
 123 S. Broad Street  
 8<sup>th</sup> Floor  
 Philadelphia, PA 19109  
 Attn: Peter C. Soens

or to such other address as Landlord may from time to time designate in writing.

7. Tenant hereby agrees to continue to occupy the Premises in its “AS-IS”, “WHERE-IS” condition, and Landlord shall have no obligation to perform any renovations to the Premises.

**8. TENANT TERMINATION RIGHT. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AMENDMENT AND THE LEASE AND UNLESS THE LEASE IS TERMINATED SOONER IN ACCORDANCE WITH THE TERMS HEREOF, TENANT SHALL HAVE THE RIGHT, IN ITS SOLE AND ABSOLUTE DISCRETION, TO TERMINATE THE LEASE EFFECTIVE ON EACH OF THE ANNIVERSARIES OF THE EXTENSION TERM COMMENCEMENT DATE (E.G. AUGUST 1, 2011, AUGUST 1, 2012 AND AUGUST 1, 2013), UPON NO LESS THAN SIX (6) MONTHS PRIOR WRITTEN NOTICE TO THE LANDLORD**

(“TERMINATION NOTICE”), WHICH TERMINATION NOTICE SHALL SPECIFY THE DATE OF TERMINATION OF THE LEASE (“TERMINATION DATE”), WHICH TERMINATION DATE MAY ONLY BE AN ANNIVERSARY OF THE EXTENSION TERM COMMENCEMENT DATE. THE LEASE SHALL THEN TERMINATE, WITHOUT FURTHER OBLIGATION OF TENANT, ON THE TERMINATION DATE AS IF THAT WAS THE ORIGINALLY SCHEDULED EXPIRATION DATE OF THE LEASE. IF TENANT FAILS TO TIMELY VACATE THE PREMISES, SUCH FAILURE SHALL BE AN AUTOMATIC EVENT OF DEFAULT UNDER THE LEASE, IMMEDIATELY ENTITLING LANDLORD TO EXERCISE ALL OF ITS RIGHTS AND REMEDIES HEREUNDER, OR AT LAW OR IN EQUITY, WITHOUT THE REQUIREMENT TO GIVE TENANT NOTICE OR OPPORTUNITY TO CURE SUCH DEFAULT (NOTWITHSTANDING ANYTHING TO THE CONTRARY OTHERWISE SET FORTH HEREIN OR IN THE LEASE), INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK INJUNCTIVE OR OTHER EQUITABLE RELIEF. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IN THE EVENT THE TENANT EXERCISES ITS TERMINATION RIGHT PURSUANT TO THIS SECTION 8, THE RENTAL DURING THE SIX-MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINATION DATE SHALL AUTOMATICALLY BE REVISED TO MEAN A MONTHLY AMOUNT OF FIFTEEN THOUSAND DOLLARS (\$15,000.00).

*Initials of Authorized Signatory of TENANT \_\_\_\_\_*

**9. LANDLORD TERMINATION RIGHT.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AMENDMENT AND THE LEASE AND UNLESS THE LEASE IS TERMINATED SOONER IN ACCORDANCE WITH THE TERMS THEREOF, LANDLORD SHALL HAVE A ONE-TIME RIGHT, IN ITS SOLE AND ABSOLUTE DISCRETION, TO TERMINATE THE LEASE EFFECTIVE JUNE 30, 2013 (“TERMINATION DATE”), UPON NO LESS THAN SIX (6) MONTHS PRIOR WRITTEN NOTICE TO THE TENANT (“TERMINATION NOTICE”). THE LEASE SHALL THEN TERMINATE ON THE TERMINATION DATE AS IF THAT WAS THE ORIGINALLY SCHEDULED EXPIRATION DATE OF THE LEASE. IF TENANT FAILS TO TIMELY VACATE THE PREMISES, SUCH FAILURE SHALL BE AN AUTOMATIC EVENT OF DEFAULT UNDER THE LEASE, IMMEDIATELY ENTITLING LANDLORD TO EXERCISE ALL OF ITS RIGHTS AND REMEDIES HEREUNDER, OR AT LAW OR IN EQUITY, WITHOUT THE REQUIREMENT TO GIVE TENANT NOTICE OR OPPORTUNITY TO CURE SUCH DEFAULT (NOTWITHSTANDING ANYTHING TO THE CONTRARY OTHERWISE SET FORTH HEREIN OR IN THE LEASE), INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK INJUNCTIVE OR OTHER EQUITABLE RELIEF. IN THE EVENT LANDLORD EXERCISES ITS TERMINATION RIGHT PURSUANT TO THIS SECTION 9, THE RENTAL PAYABLE BY TENANT SHALL REMAIN UNCHANGED FROM THE SCHEDULE LISTED IN SECTION 5 ABOVE.

**10. THE CONFESSION OF JUDGMENT PROVISIONS CONTAINED IN THE LEASE ARE HEREBY RESTATED AS SET FORTH IN THIS SECTION 10.**

**TENANT HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY AFFIRMS, RATIFIES AND AGREES TO BE BOUND BY THE CONFESSION OF JUDGMENT PROVISIONS CONTAINED IN THIS SECTION.**

**(a) CONFESSION OF JUDGMENT. THE FOLLOWING FOUR (4) PARAGRAPHS SET FORTH WARRANTS OF AUTHORITY FOR AN ATTORNEY TO CONFESS JUDGMENT AGAINST TENANT. IN GRANTING THIS RIGHT TO CONFESS JUDGMENT AGAINST TENANT, TENANT HEREBY KNOWINGLY, INTENTIONALLY, VOLUNTARILY AND IRREVOCABLY AND, ON THE ADVICE OF THE SEPARATE COUNSEL OF TENANT, UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS TENANT HAD OR MAY HAVE TO PRIOR NOTICE AND AN OPPORTUNITY FOR HEARING UNDER THE RESPECTIVE CONSTITUTIONS AND LAWS OF THE UNITED STATES AND THE COMMONWEALTH OF PENNSYLVANIA.**

**(i) CONFESSION OF JUDGMENT/MONEY DAMAGES. IF RENT AND/OR ANY CHARGES RESERVED AS RENT SHALL REMAIN UNPAID ON ANY DAY WHEN THE SAME OUGHT TO BE PAID, TENANT HEREBY EMPOWERS ANY PROTHONOTARY, CLERK OF COURT, OR ATTORNEY OF ANY COURT OF RECORD TO APPEAR FOR TENANT IN ANY AND ALL ACTIONS WHICH MAY BE BROUGHT FOR RENT AND/OR THE CHARGES, PAYMENTS, COSTS AND EXPENSES RESERVED AS RENT, OR AGREED TO BE PAID BY THE TENANT AND/OR TO SIGN FOR TENANT AN AGREEMENT FOR ENTERING IN ANY COMPETENT COURT AN AMICABLE ACTION OR ACTIONS FOR THE RECOVERY OF RENT OR OTHER CHARGES, PAYMENTS, COSTS AND EXPENSES, AND IN SAID SUITS OR IN SAID AMICABLE ACTION OR ACTIONS TO CONFESS JUDGMENT AGAINST TENANT FOR ALL OR ANY PART OF THE RENT SPECIFIED IN THE LEASE AND THEN UNPAID INCLUDING, AT LESSOR'S OPTION, THE RENT FOR THE ENTIRE UNEXPIRED BALANCE OF THE TERM OF THE LEASE, AND/OR OTHER CHARGES, PAYMENTS, COSTS AND EXPENSES RESERVED AS RENT OR AGREED TO BE PAID BY THE TENANT, AND FOR INTEREST AND COSTS TOGETHER WITH ANY ATTORNEY'S COMMISSION OF FIVE (5%) PERCENT. SUCH AUTHORITY SHALL NOT BE EXHAUSTED BY ONE EXERCISE THEREOF, BUT JUDGMENT MAY BE CONFESSED AS AFORESAID FROM TIME TO TIME AS OFTEN AS ANY OF SAID RENT AND/OR OTHER CHARGES, PAYMENTS, COSTS AND EXPENSES, RESERVED AS RENT SHALL FALL DUE OR BE IN ARREARS, AND SUCH POWERS MAY BE EXERCISED AS WELL AFTER THE EXPIRATION OF THE ORIGINAL TERM AND/OR DURING ANY EXTENSION OR RENEWAL OF THE LEASE.**

**(ii) CONFESSION OF JUDGMENT/EJECTMENT. WHEN THE LEASE SHALL BE DETERMINED BY CONDITION BROKEN, EITHER DURING THE ORIGINAL TERM OF THE LEASE OR ANY RENEWAL OR EXTENSION THEREOF, AND ALSO WHEN AND AS SOON AS THE TERM HEREBY CREATED OR ANY EXTENSION THEREOF SHALL HAVE EXPIRED, IT SHALL BE LAWFUL FOR ANY ATTORNEY AS ATTORNEY FOR TENANT TO FILE AN AGREEMENT FOR ENTERING IN ANY**

COMPETENT COURT AN AMICABLE ACTION AND JUDGMENT IN EJECTMENT AGAINST TENANT AND ALL PERSONS CLAIMING UNDER TENANT FOR THE RECOVERY BY LANDLORD OF POSSESSION OF THE THEREIN DEMISED PREMISES, FOR WHICH THE LEASE SHALL BE HIS SUFFICIENT WARRANT, WHEREUPON, IF LANDLORD SO DESIRES, A WRIT OF EXECUTION OR OF POSSESSION MAY ISSUE FORTHWITH, WITHOUT ANY PRIOR WRIT OR PROCEEDINGS WHATSOEVER, AND PROVIDED THAT IF FOR ANY REASON AFTER SUCH ACTION SHALL HAVE BEEN COMMENCED THE SAME SHALL BE DETERMINED AND THE POSSESSION OF THE PREMISES HEREBY DEMISED REMAIN IN OR BE RESTORED TO TENANT, LANDLORD SHALL HAVE THE RIGHT UPON ANY SUBSEQUENT DEFAULT OR DEFAULTS, OR UPON THE TERMINATION OF THE LEASE AS THEREINBEFORE SET FORTH, TO BRING ONE OR MORE AMICABLE ACTION OR ACTIONS AS THEREINBEFORE SET FORTH TO RECOVER POSSESSION OF THE SAME PREMISES.

**Initials of Authorized Signatory of TENANT \_\_\_\_\_**

**(iii) AFFIDAVIT OF DEFAULT.** IN ANY AMICABLE ACTION OR EJECTMENT AND/OR FOR RENT IN ARREARS, LANDLORD SHALL FIRST CAUSE TO BE FILED IN SUCH ACTION AN AFFIDAVIT MADE BY HIM OR SOMEONE ACTING FOR HIM SETTING FORTH THE FACTS NECESSARY TO AUTHORIZE THE ENTRY OF JUDGMENT, OF WHICH FACTS SUCH AFFIDAVIT SHALL BE CONCLUSIVE EVIDENCE AND IF A TRUE COPY OF THE LEASE (AND OF THE TRUTH OF THE COPY SUCH AFFIDAVIT SHALL BE SUFFICIENT EVIDENCE) BE FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL AS A WARRANT OF ATTORNEY, ANY RULE OF COURT, CUSTOM OR PRACTICE TO THE CONTRARY NOTWITHSTANDING.

**(iv) TENANT WAIVER.** TENANT EXPRESSLY AGREES THAT ANY JUDGMENT, ORDER OR DECREE ENTERED AGAINST HIM BY OR IN ANY COURT OR MAGISTRATE BY VIRTUE OF THE POWERS OF ATTORNEY CONTAINED IN THE LEASE, OR OTHERWISE, SHALL BE FINAL, AND THAT HE WILL NOT TAKE AN APPEAL, CERTIORARI, WRIT OF ERROR, EXCEPTION OR OBJECTION TO THE SAME, OR FILE A MOTION OR RULE TO STRIKE OFF OR OPEN OR TO STAY EXECUTION OF THE SAME, AND RELEASES TO LANDLORD AND TO ANY AND ALL ATTORNEYS WHO MAY APPEAR FOR TENANT ALL ERRORS IN THE SAME PROCEEDINGS, AND ALL LIABILITY THEREFOR. TENANT EXPRESSLY WAIVES THE BENEFITS OF ALL LAWS, NOW OR HEREAFTER IN FORCE, EXEMPTING ANY GOODS ON THE DEMISED PREMISES, OR ELSEWHERE FROM DISTRAINT, LEVY OR SALE IN ANY LEGAL PROCEEDINGS TAKEN BY THE LANDLORD TO ENFORCE ANY RIGHTS UNDER THE LEASE. TENANT FURTHER WAIVES THE RIGHT OF INQUISITION ON ANY REAL ESTATE THAT MAY BE LEVIED UPON TO COLLECT ANY AMOUNT WHICH MAY BECOME DUE UNDER THE TERMS AND CONDITIONS OF THE LEASE, AND DOES HEREBY VOLUNTARILY CONDEMN THE SAME AND AUTHORIZES THE PROTHONOTARY OR CLERK OF COURT TO ISSUE A WRIT OF EXECUTION OR OTHER PROCESS UPON TENANT'S VOLUNTARY CONDEMNATION, AND FURTHER



AGREES THAT THE SAID REAL ESTATE MAY BE SOLD ON A WRIT OF EXECUTION OR OTHER PROCESS. IF PROCEEDINGS SHALL BE COMMENCED BY LANDLORD TO RECOVER POSSESSION UNDER THE ACTS OF ASSEMBLY, EITHER AT THE END OF THE TERM OR SOONER TERMINATION OF THE LEASE, OR FOR NONPAYMENT OF RENT OR ANY OTHER REASON TENANT SPECIFICALLY WAIVES THE RIGHT TO THE THREE (3) MONTHS' NOTICE AND/OR THE FIFTEEN (15) OR THIRTY (30) DAYS' NOTICE REQUIRED BY THE ACT OF APRIL 6, 1951, P.L. 69, AND AGREES THAT FIVE (5) DAYS' NOTICE SHALL BE SUFFICIENT IN EITHER OR ANY OTHER CASE.

**Initials of Authorized Signatory of TENANT \_\_\_\_\_**

11. Tenant represents and warrants that it has not dealt with any other broker or agent in the negotiation for this Amendment other than SSH Real Estate, acting solely as Landlord's agent, and agrees to indemnify and hold Landlord harmless from any and all costs or liability for compensation claimed by any other such broker or agent employed by Tenant or claiming to have been engaged by Tenant in connection with this Amendment.

12. Miscellaneous Provisions.

(a) Except as modified by this Amendment, the Lease and all of the covenants, agreements, terms and conditions thereof shall remain in full force and effect and are hereby in all respects ratified and confirmed. If there is any conflict between the provisions of this Amendment and the provisions of the Lease, the provisions of this Amendment shall control.

(b) The covenants, agreements, terms and conditions contained in this Amendment shall bind and inure to the benefit of the parties hereto and their respective successors, assigns, executors and administrators.

(c) This Amendment or the Lease may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Amendment may be executed in one or more counterparts, each of which counterpart shall be deemed an original as against any party whose signature appears thereon, but all of which taken together shall constitute but one and the same Amendment.

(e) If any of the provisions of the Lease, as amended hereby, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of the Lease, as amended hereby, or the application of such provision or provisions to any person or circumstance other than those to whom or which it is held invalid or unenforceable shall not be affected thereby, and every provision of the Lease, as amended hereby, shall be valid and enforceable to the fullest extent permitted by law.

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IN WITNESS WHEREOF, Landlord and Tenant have executed and delivered this Extension and Amendment Agreement as of the date and year first written above.

**LANDLORD:**

GIRARD SQUARE A NY LP  
By its General Partner,  
Girard Square A GP LLC

By: \_\_\_\_\_

Name:

Title:

Attest:

By: \_\_\_\_\_

Name:

**TENANT:**

PHILADELPHIA GAS WORKS BY  
PHILADELPHIA FACILITIES MANAGEMENT  
CORPORATION

By: \_\_\_\_\_

Name:

Title:

Attest:

By: \_\_\_\_\_

Name:

Title

# City of Philadelphia

BILL NO. 100336 continued

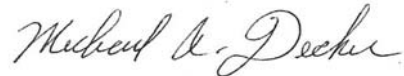
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# City of Philadelphia

BILL NO. 100336 continued

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 10, 2010. The Bill was Signed by the Mayor on June 23, 2010.



Michael A. Decker  
Chief Clerk of the City Council