

City of Philadelphia



(Bill No. 110517)

AN ORDINANCE

Authorizing the Commissioner of Public Property, on behalf of the City of Philadelphia, to enter into a lease agreement with the Philadelphia Municipal Authority for a certain portion of a parcel of ground located at the Northeast Water Pollution Control Plant, 3899 Richmond Street, Philadelphia, Pennsylvania; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Commissioner of Public Property, on behalf of the City of Philadelphia, as landlord, is hereby authorized to enter into a lease agreement with the Philadelphia Municipal Authority, as landlord, for a premises located at 3899 Richmond Street, Philadelphia, Pennsylvania, pursuant to terms substantially set forth in the document attached hereto as Exhibit "A".

SECTION 2. The City Solicitor is hereby authorized to review and to approve the lease and other documents necessary to effectuate this Ordinance, and to impose such terms and conditions on them as the City Solicitor may deem necessary and proper to protect the interests of the City of Philadelphia and to carry out the purpose of this Ordinance.

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EXHIBIT A

SITE LEASE

THIS SITE LEASE AGREEMENT (the "Site Lease") is dated as of the _____ day of _____, 2011, by and between, THE CITY OF PHILADELPHIA a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania (the "Landlord"), and THE PHILADELPHIA MUNICIPAL AUTHORITY, (the "Tenant").

WITNESSETH:

WHEREAS, the Landlord, a Pennsylvania municipal corporation acting by and through its Water Department, operates the Northeast Water Pollution Control Plant ("Northeast WPC Plant") at certain property owned by the City and located on Richmond Street in the City of Philadelphia, Pennsylvania; and

WHEREAS, the Landlord and the Tenant have entered into a facility lease (the "Facility Lease") for the construction, installation, financing and maintenance of a cogeneration facility at the Demised Premises; and

WHEREAS, the Landlord has made available certain land areas within the boundaries of the Northeast WPC Plant for the construction, installation, financing and maintenance of a cogeneration facility ("Demised Premises");

WHEREAS, Tenant has requested to lease the Demised Premises from the Landlord for the construction, installation, financing and maintenance of a cogeneration facility at the Demised Premises; and

WHEREAS, Tenant intends to sublease the Demised Premises as Lessor to AMERESCO, Inc. and Sumitomo Mitsui Banking Corporation in order to fulfill its obligations under the Facility Lease; and

WHEREAS, the Landlord is willing to grant said Site Lease upon the promises herein set forth.

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

1. DEFINITIONS.

Capitalized terms used and not defined in this Lease shall have the meanings ascribed to them in the Facility Lease.

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2. DEMISED PREMISES.

A. Definition of Demised Premises. Landlord, subject to the terms and conditions hereof, hereby leases to Tenant and Tenant hereby leases from Landlord certain land (collectively, the "Land") as more fully described in Exhibit C (the "Construction Period Term Area") and Exhibit D (the "Facility Lease Period Term Area") under and subject to matters of record, zoning and applicable law relative to the locations of improvements on the Land and the use and operation of such improvements and any condition which a current and accurate land survey may disclose. The Land, together with any buildings, fixtures and improvements existing thereon as of the effective date hereof and hereinafter located thereon are referred to collectively as the "Demised Premises."

B. "AS IS" Condition. Tenant represents and warrants to Landlord that Tenant is familiar with the Demised Premises and, except as expressly set forth herein or in the Facility Lease, that they have been leased to Tenant in an "AS IS" and "WHERE IS" condition, without any representation or warranty, express or implied, including without limitation any warranty of fitness for purpose providing however that Landlord warrants that it does not know of any violations of federal, state or local environmental laws, rules or regulations concerning the Land.

C. Permitted Use. In accordance with the provisions of this Site Lease, the Demised Premises shall be used for the purposes of the construction, installation, financing and maintenance of a cogeneration facility and related functions as fully set forth in the Facility Lease (the "Permitted Use") and for no other purpose.

3. TERM. Tenant shall use and occupy the Demised Premises for the "Term." For purposes of this Lease, the "Term" shall consist of the Construction Period and the Facility Lease Period as such are defined in the Facility Lease. Notwithstanding anything in this Lease to the contrary, the Term of this Lease shall be exactly coterminous with the "Term" of the Facility Lease as such term is defined therein and the Term of this Lease shall commence and expire (whether upon the natural expiration or early termination or renewal) on the same exact dates as the Facility Lease.

A. Construction Period Term.

- (i) The Construction Period Term shall commence on the Facility Lease Date (as such term is defined in the Facility Lease) and shall expire on the last day of the Construction Period under the Facility Lease.
- (ii) During the Construction Period Term, the Demised Premises shall consist of the Land and improvements fully described in Exhibits C and D.

B. Facility Lease Period Term.

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- (i) The Facility Lease Term shall commence on the first day of the Facility Lease, which date shall be the day immediately following the last day of the Construction Period Term and shall expire on the last day of the sixteenth (16th) Facility Lease Term Year unless terminated or renewed previously pursuant to the terms hereof. For the purposes of this Lease, the first "Facility Lease Term Year" shall mean the period from the first day of the Facility Lease under the Facility Lease through the last day of the twelfth (12th) calendar month following the first day of the Facility Lease under the Facility Lease (e.g., if such first day of the Facility Lease is December 1, 2012, the end of the first Facility Lease Term Lease Year will occur December 31, 2013.) Each "Facility Lease Term Year" thereafter shall be a full twelve month period.
- (ii) Upon or before completion of the Facility Lease Term, this Site Lease may be renewed at the discretion of the Landlord and Tenant pursuant to the renewal of the Facility Lease for additional terms for a total period of up to five (5) years.
- (iii) During the Facility Lease Term, the Demised Premises shall consist of the Land and improvements fully described in Exhibit D.

C. Right to Terminate.

Landlord or Tenant shall have the right to terminate this Site Lease pursuant to the applicable provisions of the Facility Lease including but not limited to termination for cause, termination due to uncontrollable circumstances or exercise of the buy-out option. If the Facility Lease is terminated for any reason, this Lease shall likewise be terminated. In the event of termination of this Site Lease, Landlord or Tenant, as the case may be, shall give the other party written notice of the termination date, which shall be not less than ninety (90) days from the date of the written notice (the "Termination Date").

4. RENT.

As for rent during the Term hereof, the Tenant covenants to pay the Landlord the sum of one dollar (\$1.00) per Lease Year, including each Construction Period Term Lease Year and Facility Lease Term Year, and, which shall be paid in advance on the first day of each Lease Year.

5. TAXES AND ADDITIONAL RENT.

A. Definition of Taxes. As used herein, the term "Taxes" shall mean and include all real estate taxes and assessments, general or special, ordinary or extraordinary, foreseen or unforeseen, imposed upon the Land, and any existing or future improvements

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of whatever kind thereto or thereon, and any income received by Tenant from its activities on the Land. Taxes shall include, without limitation, any assessment imposed upon the Demised Premises by any public or private entity by reason of any building being located in a special services district or similar designation. Included under the term "Taxes" shall also be any transfer taxes due in connection with this Lease, City of Philadelphia Business Privilege Tax (if any are due and payable), Net Profits Tax (if any are due and payable), School District Realty Use & Occupancy Tax (if any are due and payable) and other similar taxes and charges. If, due to a future change in the method of taxation, any other tax, however designated, is imposed in substitution for Taxes or any part thereof, or if any rental tax is imposed, then rental or such other taxes shall be included in the word "Taxes."

B. Payment of Taxes. Unless otherwise agreed in the Facility Lease, during the Term of this Site Lease, Tenant shall pay or cause to be paid, before each installment is due, any and all Taxes assessed or imposed upon the Demised Premises and against the Land, Tenant's Improvements and the building or any portion thereof. Upon the request of Landlord, Tenant shall provide Landlord with evidence reasonably acceptable to Landlord that each such installment has been paid on or before the date each such installment is due. Notwithstanding the foregoing, Tenant may withhold payment of Taxes to contest the validity of any Taxes, provided Tenant shall give the Landlord such reasonable security to insure payment and to prevent any sale, foreclosure or forfeiture of the Demised Premises by reason of such non-payment as Landlord may reasonably require. Upon final determination of the validity of any such Taxes, Tenant shall pay any judgment or decree rendered against Tenant or Landlord with all proper costs and charges.

6. CARE OF DEMISED PREMISES. Tenant agrees that it shall:

A. Comply, at its own cost and expense, with any and all applicable governmental laws, codes, ordinances, rules and regulations of Boards of Fire Underwriters, Ratings Boards or the like (or successor agencies), including without limitation all rules, regulations, ordinances and procedures issued from time to time by the Department of Commerce and any other authorities having jurisdiction over any phase of operation in and about the Demised Premises, and further including the Americans with Disabilities Act of 1990, as amended or hereinafter amended (the "ADA").

B. Unless otherwise set forth in the Facility Lease, give Landlord access to the Demised Premises at all reasonable times upon reasonable advance notice, provided Landlord complies with all provisions of the Facility Lease with respect to any entry onto the Demised Premises by Landlord or Landlord's agents or representatives.

C. Subject to the specific terms of the Facility Lease, Tenant shall keep the Demised Premises in good order and condition, commit no waste on the Demised

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Premises, and discharge all maintenance, repair, renewal, and replacement obligations set forth under the Facility Lease. Tenant shall assume full repair and maintenance responsibilities for all Tenant's Improvements, existing and new facilities, and shall maintain the same in good order and condition. Maintenance shall include, but not be limited to, fencing, snow and ice removal, all janitorial services, the repair and/or replacement of damage caused by its employees, patrons or its operation thereon; repair of all Facility, drainage installation, paving, curbs, islands, buildings and improvements; and repainting buildings as necessary.

D. Provide a complete and proper arrangement for the frequent and adequate sanitary handling and disposal, away from the Demised Premises, of all trash, garbage and other refuse caused as a result of the operation of its business.

E. Recognize that Tenant's Improvements attached and/or affixed to the Demised Premises may not be removed or modified except in accordance with the terms of the Facility Lease.

F. Upon the termination of this Site Lease in any manner whatsoever Tenant shall comply with all provisions of the Facility Lease relative to Tenant's obligations upon termination. Property not removed by Tenant at the termination of this Site Lease, however terminated, which property is left after all requirements relative to termination under the Facility Lease haven been performed may be considered abandoned and Landlord may dispose of the same as it deems expedient.

G. Not overload, damage or deface the Demised Premises or any part thereof or any of its systems or Facility, or do any act which may make void or voidable any insurance on the Demised Premises or which may render an increased or extra premium payable for insurance.

H. Not make any structural alteration of, improvements to, or addition to the Demised Premises except in accordance with the Facility Lease.

I. Except as may be provided under the Facility Lease, not install any Facility of any kind or nature whatsoever which may by itself or in combination with other Facility already in the Demised Premises affect or necessitate any changes, replacements or additions to or require the use of the water system, plumbing system, heating system, air conditioning system or the electrical system of the Demised Premises without the prior written consent of the Landlord, which consent shall be at the sole discretion of the Landlord and which consent may be conditioned upon the payment by the Tenant of specific installation costs and/or special monthly charges. Landlord may condition its consent for the installation of Facility which may cause the usage of excess electricity or water upon the agreement of Tenant to the installation of utility meters, at Tenant's sole cost and expense, whereby the Landlord may determine the additional charges to be paid by Tenant with regard thereto. Nothing in this Subsection I. shall

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require Tenant to obtain the written consent of Landlord before performing routine maintenance and nonstructural repair of the Demised Premise or any Facility or systems therein.

J. Not without the prior written approval of Landlord, which may be granted or withheld by Landlord in its sole discretion, erect, maintain or display any signs in the Demised Premises. In addition to Landlord's approval, Tenant at its sole cost and expense shall obtain the approval of all other local, state and federal agencies as may be required.

K. Appoint a local representative who shall have the authority to make day-to-day decisions and shall be responsible for coordinating all activities with Landlord. The name, address and telephone number of the local representative is to be submitted to Landlord as set forth in the Facility Lease, and Landlord is to be notified immediately of any changes.

L. Except as otherwise set forth in the Facility Lease, not use or occupy, or suffer or permit the use or occupancy of, the Demised Premises or any part thereof in any manner or by anything, in any way, in the sole judgment of Landlord, which would impair the appearance, character or reputation of the Northeast WPC Plant, the City, or create a nuisance condition at the Northeast WPC Plant or the mechanical facilities thereof or tend to impair or interfere with the use of any of the other areas of the Northeast WPC Plant or result in discomfort or annoyance or inconvenience to the Landlord or any other tenants or occupants of the Northeast WPC Plant, or increase the risk of fire or other casualty to the Demised Premises or to the Northeast WPC Plant.

M. Not permit a mechanic's lien for any labor or materials to attach to the whole or any part of the Demised Premises, and Tenant hereby agrees that if a mechanic's lien is filed upon all or any portion of the Demised Premises, Tenant shall protect and save harmless Landlord against any loss, liability or expense whatsoever, by reason thereof and shall defend at its own expense such actions or proceedings as may be necessary to remove such lien from the records within ten (10) days of notice to Tenant of the existence of said lien. Tenant may, however, in good faith and with due diligence contest any mechanics lien or other lien filed or established against all or any portion of the Demised Premises, and in such event may permit such lien or charge to remain undischarged and unsatisfied during the period of such contest and appeal therefrom, if Tenant posts a bond so that no lien attaches to the Demised Premises and if (i) the Landlord is satisfied that Tenant is effectively preventing or staying the execution, foreclosure or enforcement of such lien or charge; or (ii) such contest or appeal shall prevent or stay the execution or enforcement or foreclosure of such lien or charge. If such lien or charge is so stayed and such stay thereafter expires or if by nonpayment of any such lien the Demised Premises or any portion thereof will be subject to loss or forfeiture then Tenant shall forthwith pay and cause to be satisfied and discharged such

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lien or charge or secure such payment by posting a bond, in form and substance satisfactory to the Landlord.

N. Tenant shall maintain its ability to operate a business in the Commonwealth of Pennsylvania throughout the Term of this Site Lease.

O. Tenant shall obtain all government approvals necessary to operate and maintain existing improvements included in the Demised Premises and to construct and operate all Tenant Improvements, as defined below, on the Demised Premises.

7. MAINTENANCE AND UTILITIES

A. General Maintenance. Except as set forth to the contrary in the Facility Lease, at all times during the Term, Tenant must, at its sole cost and expense, keep and maintain the Demised Premises and all Tenant's Improvements, fixtures, appurtenances, installations and systems located in or on the Demised Premises including, without limitation, the interior and exterior of the Building, its foundation and structural supports, its roof, its electrical, plumbing, heating, ventilating, and air conditioning, in compliance with all Applicable Laws, in good order and condition, normal wear and tear and damage by insurable casualty excepted (provided that Tenant has at all times obtained and maintained all insurance required under this Lease and/or Facility Lease), and Tenant shall not knowingly allow any nuisance to exist or be maintained in, on, or about the Demised Premises or to emanate from the Demised Premises. Without limiting the immediately preceding sentence, the Tenant must, at its sole cost and expense, keep and maintain the Demised Premises in the condition required under the Facility Lease, normal wear and tear and damage by insurable casualty excepted. Except as specifically set forth under the Facility Lease, Landlord has no obligation under this Site Lease to either perform or to pay for any maintenance or for any repairs, replacements, or renewals of any kind, nature, or description whatsoever in, on, about or to the Demised Premises or any part of the Demised Premises.

B. Exterior Maintenance. Without limiting Section 7(A) above, and subject to the terms set forth in the Facility Lease, throughout the Term, Tenant must, at its sole cost and expense, perform all exterior maintenance in, on, and about the Demised Premises. Tenant's exterior maintenance responsibilities shall include, but not be limited to:

(i) all necessary work to keep the Land attractive and clean,;

(ii) maintenance, repair, and replacement (if irreparably damaged or deteriorated) of all hard surfaces within the Demised Premises, including all sidewalks, driveways, curbs and walkways,;

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- (iii) promptly clearing and removing all snow and ice from the parking areas and the sidewalks, driveways, roadways, paths, and walkways and all other impervious or semi-pervious surfaces that are within the boundaries of the Demised Premises;
- (iv) promptly cleaning and removing all trash, litter, and debris that may come onto the Demised Premises; and
- (v) weed, pest and vermin control.

C. Utilities. All issues relative to utilities are as set forth with particularity in the Facility Lease. Tenant may connect to utilities located on the Demised Premises.

8. **SUBLETTING AND ASSIGNING.** To the extent that Tenant is permitted to sublet or assign its rights and obligations under the Facility Lease, Tenant shall permitted to sublet or assign its rights and obligations under this Lease. Notwithstanding anything in this Lease to the contrary, the Term of this Lease shall be exactly coterminous with the “Term” of the Facility Lease as such term is defined therein and the Term of this Lease shall commence and expire (whether upon the natural expiration, early termination, renewal, assignment or transfer) on the same exact dates as the Facility Lease.

A. General Restriction. Except as expressly permitted pursuant to this Section 8 and the Facility Lease, Tenant shall not, without the prior written consent of Landlord, assign, hypothecate or suffer or permit any involuntary assignment, attachment or execution upon this Lease or any interest herein or sublet the Demised Premises or any part thereof.

B. Future Compliance. Regardless of Landlord's consent, consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. Landlord may consent to subsequent assignment or subletting or may execute amendments or modifications to this Lease with assignees of Tenant without notifying Tenant or any successor of Tenant, and without obtaining its or their consent thereto, except as set forth above.

9. **FIRE OR OTHER CASUALTY.** Subject to the provisions of this Section 9, if the Demised Premises is damaged by fire or other casualty, the provisions of the Facility Lease shall control. In no event shall the Landlord be obligated to repair or restore any such damage. Rent until such repairs are completed shall not be abated or apportioned. Tenant acknowledges notice that (i) Landlord shall not obtain insurance of any kind on the Land, the Demised Premises, Tenant's furniture, furnishings, Facility or fixtures, alterations, Tenant's Improvements and additions, and (ii) it is Tenant's obligation to

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obtain such insurance at Tenant's sole cost and expense as provided in Section 11. and the Facility Lease.

10. LIABILITY.

Damage in General. Unless otherwise provided in the Facility Lease, neither Landlord nor Landlord's agents, servants, and employees shall be liable for, and Tenant hereby releases and relieves Landlord and Landlord's agents, servants, and employees from, all liability in connection with any and all damage to or loss of property, loss or interruption of business occurring to Tenant, subtenants, invitees or any other person in or about or arising out of (i) Landlord's negligence or misconduct, and/or (ii) the Demised Premises from, without limitation, (A) any fire, other casualty, accident, occurrence or condition in or upon the Demised Premises; (B) any defect in or failure of: (1) plumbing, sprinkling, electrical, HVAC systems, or any other Facility or systems of the Demised Premises and (2) any stairways, railings or walkways on, or installed on the Demised Premises; (C) any steam, fuel, oil, water, rain or snow that may leak into, issue or flow from any part of the Demised Premises or Land from the drains, pipes or plumbing, sewer or other installation of same, or from any other place or quarter; (D) the breaking or disrepair of any installations, Facility and other systems; (E) the falling of any fixture or well or ceiling materials; (F) broken glass; (G) latent or patent defects; (H) the exercise of any rights by Landlord under the terms and conditions of this Lease; (I) any acts or omissions of the other tenants or occupants of nearby buildings; (J) any acts or omissions of other persons; or (K) theft, Act of God, public enemy, injunction, riot, strike, insurrection, war, court order, or any order of any governmental authorities having jurisdiction over the Demised Premises.

11. INSURANCE.

A. Tenant. The Tenant shall, at its sole cost and expense, procure and maintain in full force and effect, during the Term and any extension or renewal of this Lease, the types and minimum limits of insurance specified in the Facility Lease.

B. Contractors, Subcontractors, and Consultants. Tenant shall require that all of its contractors, subcontractors, and consultants obtain and maintain, at their respective cost and expense, the appropriate types and amounts of insurance covering the work and their performance of services, naming Landlord and the City of Philadelphia as an additional insured in conformance with the requirements of the Facility Lease.

C. Evidence of Insurance Coverage.

(i) Certificates of Insurance evidencing the required coverages shall be submitted to Landlord and the City of Philadelphia's Risk Management Division (1515 Arch Street, 14th Floor, Philadelphia, PA 19102) ("Landlord's Risk Manager") at least ten (10) days before commencement of the Term. Tenant shall furnish certified

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copies of the original policies required hereunder at any time within ten (10) days after written request by Landlord.

(ii) The insurance requirements set forth herein shall in no way be intended to limit, modify or reduce the indemnifications made in this Lease or to limit Tenant's liability to the limits of the policies of insurance required hereunder.

D. Inspection of Policies. Tenant agrees to permit Landlord at all reasonable times and upon ten (10) days notice to inspect the policies of insurance of Tenant with respect to the Demised Premises for which policies or copies thereof are not delivered to Landlord.

E. Waiver. Unless provided to the contrary in the Facility Lease, Tenant hereby releases Landlord from any and all liability or responsibility to Tenant, for all claims or anyone claiming by, through or under it or them, by way of subrogation or otherwise, for any loss or damage to property which is coverable by insurance, whether or not such insurance is maintained by Tenant.

F. Failure to Maintain. In the event Tenant fails to cause such insurance to be maintained, Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant or any other person or entity to the amount of the insurance premium or premiums not paid or incurred and which would have been payable upon such insurance, but Landlord shall also be entitled to recover as damages for such breach the uninsured amount of any loss, and damages, expenses of suit and costs, including without limitation reasonable cancellation fees, suffered or incurred during any period when Tenant shall have failed or neglected to provide insurance as required herein.

G. No Limitation. The insurance requirements set forth herein shall in no way be intended to modify, limit or reduce the indemnifications made in this Lease by Tenant to Landlord or to limit Tenant's liability under this Lease to the limits of the policies of insurance required to be maintained by Tenant.

12. EMINENT DOMAIN.

A. Total or Partial Taking. If the whole of the Demised Premises shall be condemned or taken either permanently or temporarily for any public or quasi-public use or purpose, under any statute or by right of eminent domain, or by private purchase in lieu thereof, then, in such event, the Term shall cease and terminate from the date when possession is taken thereunder pursuant to such proceeding or purchase.

B. Award. In the event of any total or partial taking of the Demised Premises, as provided in Section 12.A. above, Landlord shall be entitled to receive the entire award in any such proceeding and Tenant hereby assigns any and all right, title and interest of Tenant now or hereafter arising in or to any such award or any part thereof and

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hereby waives all rights against Landlord and the condemning authority, except that Tenant shall have the right to be fairly compensated by the Landlord for any investments and improvements in the Demised Premises made by Tenant less depreciation and in accordance with the provisions of the Facility Lease. Notwithstanding the aforesaid, if Landlord requires Tenant to repair and restore the Demised Premises, Landlord shall make such award available to Tenant for such repair and restoration.

13. DEFAULT AND REMEDIES.

A. Events of Default. The occurrence of any of the following shall constitute a material breach of the Lease by Tenant and an event of default:

(i) a failure by Tenant to observe and perform any other provision or covenant of this Lease to be observed or performed by Tenant, where such failure continues for ten (10) days after written notice thereof to Tenant provided, however, that if the nature of the default is such that the same cannot reasonably be cured within such ten (10) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion, but in no event for longer than thirty (30) days after written notice to Tenant, except if such default is not capable of cure within said thirty (30) day period then Tenant shall be given such longer cure period as Landlord, in its reasonable discretion, may provide;

(ii) the filing of a petition by or against Tenant for relief as a bankrupt or insolvent or for its reorganization or for the appointment pursuant to any local, state or federal bankruptcy or insolvency law of a receiver or trustee of any part of Tenant's property; or, an assignment by Tenant for the benefit of creditors; or the entry by Tenant into an agreement of composition with creditors; or, the taking possession of the property of Tenant by any local, state or federal governmental officer or agency or court-appointed official for the dissolution or liquidation of Tenant or for the operating, either temporary or permanent, of Tenant's business, provided, however, that if any such action is commenced against Tenant the same shall not constitute a default if Tenant causes the same to be dismissed or discharged within sixty (60) days after the filing of same; or

(iii) an Event of Default under the Facility Lease.

B. Remedies of Landlord.

(i) Upon the occurrence of any event of default set forth in Section 13.A. or elsewhere in the Lease, Landlord may take the actions set forth in the event of a default by Tenant under the Facility Lease.

14. SUBORDINATION.

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A. Generally. Landlord represents that it has disclosed to Tenant, on or before the Facility Lease Date, any and all liens of any mortgages of Landlord's interest and/or ground leases on the Land executed by Landlord, and/or other encumbrances of Landlord's interests, now or hereafter placed on the Demised Premises or the Land. Notwithstanding the foregoing, Landlord represents that any party secured by any such mortgage, ground lease or encumbrance upon the Land or the Demised Premises (the "Secured Party") has agreed in writing to recognize this Lease and, in the event of any foreclosure sale or other possession, by a Secured Party, this Lease shall continue in full force and effect.

B. Rights of Mortgagee. In the event of any act or omission of Landlord which would give Tenant the right, immediately or after lapse of a period of time, to cancel or otherwise terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right:

(i) Until it has given written notice of such act or omission to the holder of each such mortgage or ground lease whose name and address shall previously have been furnished to Tenant in writing; and

(ii) Until a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice (which reasonable period shall in no event be less than the period to which Landlord would be entitled under this Lease or otherwise, after similar notice, to effect such remedy).

15. SURRENDER AND HOLDING OVER.

A. Surrender. The Lease shall terminate and Tenant shall deliver up and surrender possession of the Demised Premises on the last day of the Term hereof, and Tenant waives the right to any notice of termination or notice to quit. Tenant covenants that upon the expiration or sooner termination of this Lease, Tenant shall, upon City election to pay fair market value for Tenant Improvements, deliver up and surrender possession of the Demised Premises in the same condition in which Tenant has agreed to keep the same during the continuance of the Lease and in accordance with the terms hereof and the Facility Lease, normal wear and tear excepted. If the City does not elect to purchase the improvements made by Tenant, the Tenant shall remove such Tenant Improvements not later than 90 days after the expiration or termination of this Lease or otherwise in accordance with the Facility Lease.

B. Hold Over. Unless otherwise provided for herein the failure of the Tenant to surrender possession of the Demised Premises upon the expiration or sooner termination of this Lease, Tenant shall pay to Landlord, an amount equal to one-hundred-fifty percent (150%) of the Fair Market Value of rent for the Demised Premises as determined by the Landlord as applied to any period in which Tenant shall remain in

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possession after expiration or sooner termination of this Lease. Otherwise, such holding over shall be on the terms and conditions set forth in this Lease as far as applicable. Landlord may, but shall not be required to, and only on written notice to Tenant after the expiration of the Term hereof, elect to treat such holding over as an extension of the Term on a month-to-month basis for an additional period of up to one (1) year (as Landlord shall so elect), to be on the terms and conditions set forth in this Lease.

16. CONSTRUCTION PAYMENT AND PERFORMANCE BONDS. Prior to the commencement of the construction of any part of the Tenant's Improvements, and at any time that Tenant undertakes any construction on the Demised Premises, Tenant shall obtain and deliver to Landlord, at no cost to Landlord, performance and payment bonds consistent with and pursuant to the requirements set forth in the Facility Lease.

17. ESTOPPEL CERTIFICATES. Tenant shall, from time to time, upon reasonable written request of the Landlord, within a reasonable time execute, acknowledge and deliver to the Landlord a written statement stating the date this Lease was executed and the date it expires; the date Tenant entered into occupancy of the Demised Premises; and certifying that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way; that this Lease represents the entire agreement between the parties and to this leasing; whether all conditions under this Lease to be performed by Landlord have been satisfied; whether on the specified date there are any existing defenses or offsets which either party has against the enforcement of this Lease by the other; whether any Rent has been paid in advance (or specifying any Rent that has been so paid); and any other requested matter affecting this Lease and any statements by Tenant affecting the correctness of the requested statements ("Estoppel Certificate"). It is intended that any such statement delivered pursuant to this Section 17 may be relied upon by a prospective purchaser of Landlord's interest or a mortgagee of Landlord's interest or assignee of any mortgage upon Landlord's interest in the Land.

18. INSTALLATIONS AND ALTERATIONS BY TENANT.

A. No Alterations. Except as set forth in the Facility Lease, Tenant shall make no structural alterations, additions or improvements in or to the Demised Premises without Landlord's prior written consent in each instance obtained. Any such alterations, additions or improvements shall (i) be in accordance with complete plans and specifications approved by Landlord (ii) be performed in a good and workmanlike manner and in compliance with all applicable laws, (iii) be made only by contractors or mechanics approved by Landlord and who (A) carry general liability and property damage insurance in type and amount acceptable to Landlord and (B) have filed lien bonds, lien waivers or the like in such form as is acceptable to Landlord in Landlord's sole discretion, (iv) unless otherwise agreed or set forth in the Facility Lease, be made at Tenant's sole expense and at such times and in such manner as Landlord may from time to time designate and (v) become part of the Demised Premises and the property of

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Landlord, if and at such time as Landlord exercises its right to purchase. Unless otherwise stated in Landlord's consent or set forth in the Facility Lease, Landlord reserves the right to require such alterations, additions or improvements placed in or upon the Demised Premises by Tenant, or portions thereof, to be removed by Tenant at Tenant's expense not later than 90 days after the termination or expiration of the Term.

B. Tenant's Improvements.

(i) Tenant shall construct or install upon the Demised Premises all improvements, structures, machinery, and Facility necessary to fulfill Tenant's obligations under this Lease and the Facility Lease.

(ii) All articles of personal property and all business fixtures, machinery, Facility and furniture owned or installed by Tenant or solely at its expense in the Demised Premises ("Tenant's Improvements") shall vest with the Tenant subject to the Landlord's right to purchase Tenant's Improvements at fair market value upon expiration or early termination of this Lease. If and as set forth in the Facility Lease, the Landlord shall have the option to require Tenant to remove Tenant's Improvements at Tenant's sole cost and expense upon such expiration or early termination. If at any time during this Lease, Tenant is required or allowed to remove Tenant's Improvements, Tenant shall repair any damage to Demised Premises caused by any such installation or removal.

C. No Mechanic's Lien. In no event shall Landlord be liable for any labor or materials furnished or to be furnished to Tenant upon credit, and no mechanic's or other lien for any such labor or materials shall attach to or affect the reversion or other estate or interest of Landlord in or to the Demised Premises. Whenever and as often as any mechanic's lien shall have been filed against the Tenant's Improvements based upon any act or interest of Tenant or of anyone claiming through Tenant, Tenant shall forthwith take such action by bonding, deposit or payment as will remove or satisfy the lien.

D. Waiver of Liens. Tenant shall cause to be executed and delivered to the Landlord a Waiver of Liens to be filed with the Prothonotary of Philadelphia County, Pennsylvania, proof of which shall be supplied to Landlord prior to the commencement of any construction or installation work at the Demised Premises.

E. Increase in Taxes. If so required under the terms of the Facility Lease and if Tenant shall make or cause to be made at its own expense any alteration, addition or improvement to the Demised Premises (including those improvements required under the Facility Lease) which shall result in an increase in the Taxes then Tenant shall pay, in addition to the Rent and other charges, the entire increase in such Taxes attributable to such alteration, addition or improvement. Notwithstanding the foregoing, Tenant may contest the validity of any such increase in Taxes, provided Tenant shall give the Landlord such reasonable security to insure payment and to prevent any sale, foreclosure or forfeiture of the Demised Premises by reason of such non-payment as Landlord may

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reasonably require. Upon final determination of the validity of any such Taxes, Tenant shall pay any judgment or decree rendered against Tenant or Landlord with all proper costs and charges.

F. Mortgages. Tenant may encumber its interests in the leasehold estate created by this Lease and/or its improvements by way of a leasehold mortgage provided that Tenant provides Landlord with prior written notice of any proposed leasehold mortgage, that Landlord shall have previously approved all documents to be executed by Tenant and the leasehold mortgage, which approval shall be granted or not granted in a legally permissible manner and in a manner reasonable for the exercise of Landlord's municipal function.

19. ENVIRONMENTAL MATTERS.

A. Environmental Definitions.

(i) "Hazardous Substance" shall mean substances brought onto the Demised Premises or Land by Tenant including: (i) asbestos, flammables, volatile hydrocarbons, industrial solvents, explosives, hazardous chemicals, radioactive material, oil, petroleum, petroleum products or by products, crude oil, natural gas, natural gas liquids, hazardous chemical gases and liquids, volatile or highly volatile liquids, and/or synthetic gas, and shall include, without limitation, substances defined as "hazardous substances," "hazardous materials," "hazardous waste," "toxic substances," "pollutants," or "contaminants," as those terms are used in any Environmental Law or at Common Law, and (ii) any and all other materials or substances that any governmental agency or unit having appropriate jurisdiction shall determine in generally applicable regulations from time to time are hazardous, harmful, toxic, dangerous or otherwise required to be removed, cleaned-up, or remediated.

(ii) "Environmental Law" as used in this Lease shall mean all current and future federal, state, and local environmental safety or health laws, statutes, rules, regulations, ordinances, orders, or common law including, but not limited to, reported decisions of any state or federal court and shall include, but not be limited to, the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. § 651 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.); the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 et seq.); the Toxic Substances Control Act, as amended, (15 U.S.C. § 2601 et seq.); the Hazardous Materials Transportation Act, as amended (49 U.S.C. § 1801 et seq.); the Clean Air Act, as amended, (42 U.S.C. § 7401 et seq.); the Clean Water Act, as amended (33 U.S.C. § 1251 et seq.); the Oil Pollution Act of 1990, as amended (33 U.S.C. § 2701 et seq.); the Safe Drinking Water Act, as amended (42 U.S.C. § 1251 et seq.); the Pennsylvania Solid Waste Management Act, as amended (35 P.S. § 6018.101 et seq.); the Pennsylvania Hazardous Sites Cleanup Act, as amended (35

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P.S. § 6020.101 et seq.); the Pennsylvania Clean Streams Law, as amended (35 P.S. § 691.1 et seq.); the Pennsylvania Underground Storage Tank and Spill Prevention Act 35 P.S. §6021.10, et seq.; and the Pennsylvania Hazardous Material Emergency Planning and Response Act, as amended (35 P.S. § 6022.101 et seq.), as any of the foregoing may hereinafter be amended; any rule or regulation promulgated pursuant thereto, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive addressing environmental, health, or safety issues of or by the federal government or the Commonwealth of Pennsylvania or other political subdivision thereof, or any agency, court or body of the federal government, or the Commonwealth of Pennsylvania or any political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions.

(iii) For the purposes of this Environmental Matters Section, the Demised Premises shall include the real estate covered by this Lease; all Improvements thereon; all fixtures or personal property used in connection with the Lease or located on the Demised Premises, including any underground storage tanks, or other storage tanks, pumps, waste oil apparatus or related lines installed by Tenant.

B. Environmental Compliance.

(i) Tenant's conduct and operations shall at all times be in compliance with all statutes, ordinances, regulations, and orders now existing or hereafter enacted by any applicable authority or requirements of common law, including, but not limited to Environmental Laws, as defined herein. Tenant shall obtain all permits, licenses, or approvals and shall make all notifications as required by law. Tenant shall at all times comply with the terms and conditions of any such permits, licenses, approvals, or notifications. In addition, Tenant shall take similar precautions in connection with materials and substances used in Tenant's operations on the Demised Premises which even if not regulated by law or requirements as aforesaid, may or could pose a hazard to the environment or the health or safety of the current or future occupants of the Demised Premises, or the owners or occupants of property adjacent to or in the vicinity of the Demised Premises ("Restricted Activities").

(ii) In accordance with the approvals and notifications required under this Environmental Matters Section and except for the improvements expressly set forth under the Facility Lease, Tenant shall not install any storage tanks, including underground storage tanks, pumps, waste oil apparatus or related lines without the Landlord's consent.

(iii) Tenant shall immediately provide to Landlord copies of:

a. applications or other materials submitted to any governmental agency in compliance with the Environmental Laws;

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b. any notification submitted to any person pursuant to the Environmental Laws with respect to the existence of a potentially adverse environmental impact of a condition on the Demised Premises or related proceedings;

c. any permit, license, approval, or amendment or modification thereto granted pursuant to the Environmental Laws;

d. upon Landlord's request at reasonable times any record or manifest required to be maintained pursuant to the Environmental Laws;

e. any notice of violation, summons, order, complaint, or any correspondence threatening or relating to any of the foregoing received by Tenant pertaining to compliance with the Environmental Laws or in connection with Restricted Activities; and

f. all plans and specifications relating to any storage tanks, including underground storage tanks, pumps, waste oil apparatus or related lines.

C. Site Contamination. Tenant shall not cause contamination of the Demised Premises arising from Restricted Activities or by Hazardous Substances as defined herein. Tenant shall at all times handle Hazardous Substances, regulated substances, as well as all other materials and substances in connection with Restricted Activities in a manner which will not cause contamination, or an unreasonable risk of contamination, of the Demised Premises and in accordance with Applicable Law. For purposes of this Section 20.C., the term "contamination" shall mean the uncontained presence of Hazardous Substances, regulated substances, or damage resulting from Tenant's activities at the Demised Premises or arising from the Demised Premises.

D. Indemnification. Tenant shall indemnify, defend and save harmless the Landlord, its officials, officers, agents, boards, commissions, employees, successors and assigns from and against any and all claims (environmental or otherwise), liabilities, damages, impairments, penalties, fines or losses (civil or criminal), including, but not limited to, any penalty or fine imposed by any governmental agency, the expense of remediating, cleaning up or disposing of any Hazardous Substance or regulated materials and all legal expenses and fees incidental to the investigation and defense thereof (including, but not limited to legal fees, litigation fees, expert witness and/or consultant fees), causes of action (collectively, "Environmental Damages"), arising or caused by acts or omissions of the Tenant, including any said costs relating or arising from Tenant's aggravation or contribution to any pre-existing condition. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

E. Environmental Removal and Disposal by Tenant.

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(i) Tenant shall be responsible for the proper removal and disposal of all Hazardous Substances or other regulated materials as defined by Local, State and Federal Regulations (whichever is applicable) generated by Tenant, resulting from or arising from Tenant's activities. Such removal and disposal shall include, but not be limited to, Tenant manifesting such regulated substances under Tenant's assigned Environmental Protection Agency Identification Number and ensuring that removal of such regulated materials from the Demised Premises is accomplished in accordance with Local, State and Federal regulations and guidelines. Additionally, environmental contamination, which impacts the Demised Premises as a result of Tenant's improper storage, handling or leakage of any of Tenant's stored substances on the Demised Premises, shall be the sole responsibility of Tenant. Tenant shall also be responsible for the safe and proper removal of all regulated substances generated by Tenant on the Demised Premises upon the termination of the Lease.

(ii) Upon termination of this Lease for any reason, unless otherwise set forth in the Facility Lease or otherwise agreed in writing between Landlord and Tenant, ownership of any storage tanks, including underground storage tanks, pumps, waste oil apparatus or related lines installed by Tenant shall remain with the Tenant and shall not pass to the Landlord. Tenant shall be responsible for the complete removal from the Demised Premises, and the disposal of said storage tanks, including underground storage tanks, pumps, waste oil apparatus or related lines within ninety (90) days of notice of termination under this Lease.

F. Environmental Audit. If required by the Facility Lease, Tenant shall conduct using a qualified independent environmental auditor reasonably approved by the Landlord, an annual environmental audit of the Tenant's operations, Facility and facilities at the Northeast WPC Plant. The Tenant shall submit a current report of the audit results to the Landlord on the annual anniversary of the Commencement Date of this Lease. If the resulting audit report reveals non-compliance by the Tenant, or any other party for which Tenant is responsible, with any Environmental Laws, or indicates that a release of Hazardous Materials has occurred at the Northeast WPC Plant, or elsewhere if such non-compliance or release appears to have been attributable to the Tenant's activities, then the Tenant shall be responsible for such non-compliance and shall deliver to Landlord a remediation report ("Compliance Report"), within thirty (30) days of the submission of the Audit Report, containing an explanation of the non-compliance and a remediation plan and schedule for the Landlord's approval. If the Landlord disagrees with any portion of the Compliance Report, the Tenant and the Landlord agree to attempt to resolve the disagreement through informal good faith negotiations. If the parties are unable to reach an agreement through informal negotiations, either party may request the selection of a neutral panel to resolve the dispute. The parties shall jointly select, retain and share the cost of a neutral panel. This neutral panel shall receive submissions from both parties and shall render a written decision which shall be final and binding on the parties. Within thirty (30) days after the Landlord approves the Compliance Report, the Tenant shall commence and expeditiously proceed to complete at its cost and expense the

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remediation plan set forth therein subject to the conditions, if any, of the Landlord's approval. Notwithstanding the foregoing, if any local, state or federal agency with jurisdiction over the Northeast WPC Plant establishes a remediation plan or schedule for the Northeast WPC Plant, such agency's plan or schedule shall control. If the Tenant does not complete the required remedial actions in the time periods set forth in the remediation plan or schedule, the Landlord shall have the right, but not the obligation, to enter upon the Northeast WPC Plant and implement any remediation actions which it deems necessary or prudent to address such non-compliance. If the Landlord implements any remediation action pursuant to the foregoing sentence, the Tenant shall pay the Landlord's entire cost of performing such work (including an amount for fully allocated administrative charges), without limitation of other claims or damages that the Landlord may have against the Tenant arising out of the terms of this Lease or otherwise.

Notwithstanding anything contained in this Section, subject to the terms of the Facility Lease, the Landlord shall have the right to conduct an environmental audit of the Tenant's operations, Facility, facilities and fixtures thereon which, except in the event that the Tenant has failed to perform the annual environmental audit required by this Section, shall be at the Landlord's own cost and expense. Landlord's audit shall have the same effect as an audit by the Tenant and at the discretion of the Landlord may be substituted for the Tenant's annual audit.

G. Inspection. Subject to the terms of the Facility Lease, Landlord may, at reasonable times after reasonable advance notice and in the presence of an employee or agent of Tenant, enter the Demised Premises to conduct reasonable inspections, tests, samplings, or other investigations in connection with Tenant's obligations under the provisions of this Section 19.G.

H. Remedies.

(i) Tenant's breach of any provision of this Section 19. shall be a material breach and an event of default under this Lease and the Landlord shall be entitled to exercise any and all remedies set forth for events of default under the Facility Lease.

(ii) The parties agree that the Landlord, in its sole discretion, may obtain specific performance by Tenant of any provision of this Section 19.

I. Preexisting Conditions.

(i) As of the date hereof, the Landlord is aware of no preexisting environmental conditions on the Land except for those previously disclosed to the Tenant. Tenant may, at its sole cost and expense, hire a consultant subject to the Landlord's review and approval (such approval not to be unreasonably withheld) to conduct such tests, investigations and studies on the Demised Premises as it deems

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necessary to determine the environmental condition thereof or to confirm the environmental condition as set forth in the first sentence of this Section.

(ii) Tenant shall give the Landlord immediate notice should it subsequently discover any Hazardous Substance.

(iii) Upon the discovery of any Hazardous Substance, Tenant shall have the duty immediately to: (1) cease and/or appropriately modify all activities and implement all appropriate safety, health and environmental controls and precautions, (2) notify the Landlord of the situation, and (3) notify governmental agencies as required under Environmental Law or other applicable law.

(iv) To the extent permitted by law and subject to the conditions stated herein, the Landlord shall hold harmless Tenant for any preexisting Hazardous Substances identified on the Demised Premises pursuant to subsections 19.I.(i)(ii). Notwithstanding anything contained in this Lease or otherwise, nothing in this Lease shall waive, or be construed to waive, any power or authority, privilege or defense, immunities or limitations of the Landlord under all applicable laws, including but not limited to Act No. 142, 42 Pa. C.S.A §§ 8501, et seq.

(v) Subject to the terms of the Facility Lease, Tenant shall provide reasonable access to Landlord, its agents and contractors, to the Demised Premises for the purpose of inspecting, cleaning up, controlling or otherwise remediating preexisting Hazardous Substances.

J. No Third Party Rights. This Section shall create no third party interests or causes of action and the Landlord expressly reserves the right to compel any party responsible for such preexisting environmental conditions to remediate at its own cost and expense.

K. Survival. The provisions of this Section 19 shall survive the termination of Tenant's tenancy or of this Lease. No subsequent modification or termination of this Lease by agreement of the parties or otherwise shall be construed to waive or to modify any provision of this Section 19 unless the termination or modification agreement or other document so states in writing.

L. End of Occupancy. If required by the Facility Lease, upon the vacating of any portion of the Demised Premises by Tenant, Tenant shall obtain, pursuant to specifications approved by the Landlord (which approval shall be given or not given in a legally permissible manner and in a manner reasonable for the exercise of the Landlord's municipal function) and the Facility Lease, an environmental assessment of the portion of the Demised Premises being vacated by Tenant at the Tenant's sole expense. Any environmental contamination disclosed in the environmental assessment prepared at the termination of the Lease not also disclosed in any environmental assessment prepared

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prior to the Commencement Date at Tenant's sole cost shall be the responsibility of the Tenant (unless Tenant can provide clear evidence that such contamination existed prior to the Commencement Date) and the Tenant shall be obligated promptly to effect the remediation of such environmental contamination and to have prepared at the Tenant's expense a post-remediation environmental assessment by a qualified professional environmental consultant acceptable to the Landlord substantiating completion of such remediation in accordance with then applicable law and consistent with industry standards. Tenant shall furnish to the Landlord true and complete copies of all environmental assessments of the Demised Premises including copies of all sampling and other data obtained as a result of the environmental assessments. Tenant shall provide the Landlord reasonable advance notice of and shall grant the Landlord, its agents and contractors, reasonable access to the Demised Premises during any environmental assessment activities and the right to accompany persons conducting any environmental assessments and to monitor the same.

20. SIGNS. Tenant shall not, without the prior written approval of Landlord, erect, maintain or display any signs at the Northeast WPC Plant or on the grounds or exterior of buildings on the Demised Premises. The term "signs" as used herein shall mean advertising signs, billboards, identification signs or symbols, posters, or any similar devices. Prior to the erection, construction or placing of any sign at the Northeast WPC Plant or upon the Demised Premises (except the interior of any buildings), Tenant shall submit to Landlord for approval drawings, sketches, design, and dimensions of such signs. Any conditions, restrictions or limitations with respect to the use thereof as stated by Landlord, in writing, shall become conditions of this Lease.

21. TENANT'S REPRESENTATIONS AND WARRANTIES. Tenant represents and warrants to Landlord that:

A. Good Standing. Tenant is duly formed, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania.

B. No Violation. Neither the execution by Tenant of this Lease nor the performance by Tenant of the terms hereof will conflict with or violate any other agreement or instrument to which Tenant is a part or any writ, order or decree by which Tenant is bound.

C. No Litigation. There is no litigation currently pending or threatened which could adversely affect Tenant's ability to perform any of its obligations hereunder.

22. NON-DISCRIMINATION

A. Local Requirements.

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(i) This Lease is entered into under the terms of the Philadelphia Home Rule Charter and in the exercise of the privileges herein granted, Tenant shall not discriminate nor permit discrimination against any person because of race, color, religion, national origin, sex or ancestry. Without limiting any other provision of this Lease, Tenant agrees, in performing this Lease, to comply with the provisions of the Fair Practices Ordinance of The Philadelphia Code (Chapter 9-1100) and the Mayor's Executive Order No. 4-86, as they may be amended from time to time, both of which prohibit, inter alia, discrimination against persons with AIDS in employment and services.

(ii) Tenant covenants and agrees that in accordance with Chapter 17-400 of the Philadelphia Code, payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment, on the basis of race, color, religion, national origin, ancestry, sex, sexual orientation or physical handicap constitutes a substantial breach of this Lease entitling Landlord to all rights and remedies provided in this Lease or otherwise available in law or equity.

a. Tenant agrees to include the immediately preceding Section, with appropriate adjustments for the identity of the parties, in all subcontracts, which are entered into for work to be performed pursuant to this Lease.

b. Subject to the terms of the Facility Lease, Tenant further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the Philadelphia Code. Failure to so cooperate shall constitute a substantial breach of this Lease entitling Landlord to all rights and remedies provided herein.

23. QUIET ENJOYMENT.

A. Performance by Tenant. Upon payment by Tenant of Rent and upon the observance and performance by Tenant of all the terms, covenants, conditions, provisions and agreements of this Lease on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Demised Premises for the Term of this Lease without hindrance or interruption by Landlord or by any person or persons lawfully claiming or holding by, through or under Landlord, subject, nevertheless, to the terms, covenants, conditions and provisions of this Lease, to all other agreements, conditions, restrictions and encumbrances of record and to all mortgages, installment sale agreements and underlying leases of record to which this Lease is, or shall become subject and subordinate.

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B. Landlord's Right to Enter. Notwithstanding the provisions of Section 23.A. but subject to the terms of the Facility Lease, Landlord shall have the right, upon reasonable oral or written notice to Tenant (or without any notice whatsoever in case of emergency), to enter upon the Demised Premises for the purpose of inspecting same and/or of making any repairs thereto and performing any work thereon (including any which may be necessary by reason of Tenant's failure to make any repairs or perform any maintenance work required to be performed by Tenant, and also including the right to install, maintain, repair, replace or remove water or sewer pipes, electrical lines, gas pipes, or any other utilities or services on the Demised Premises). The privilege and right of entry shall be exercised at reasonable times and at reasonable hours, and without unreasonable interruption or disruption to Tenant's activities and operations in the Demised Premises.

24. INDEMNIFICATION, HOLD HARMLESS, LIABILITY.

A. Indemnity. Subject to the terms of the Facility Lease, Tenant shall indemnify, defend and hold harmless Landlord, its officers, boards and commissions, employees and agents, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees and expenses), claims, suits, actions, damages, liability and expenses, occasioned wholly or in part by Tenant's failure to perform any of its obligations under this Lease or negligence, omission or fault, or the negligence, omission or fault of Tenant's agents, subcontractors, independent contractors, suppliers, employees or servants in connection with this Lease, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, intentional acts, failure to pay any Subcontractors and suppliers, any breach of this Lease of the Facility Lease, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret).

B. Defense of Proceedings. In case any action or proceeding is brought against Landlord by reason of any matter referred to in this Section 24, Tenant, upon written notice from Landlord, shall at Tenant's sole cost and expense, resist or defend such action or proceeding by counsel.

C. Survival of Obligations. The provisions of this Section 24 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.

D. Application of Environmental Obligations. Except as otherwise set forth in or limited by this Lease or the Facility Lease, the indemnification and liability to the Landlord by Tenant as set forth above, shall also apply to any and all environmental matters and shall also include but not be limited to Tenant's duty to pay any fines and satisfy any punitive measures imposed upon Landlord by governmental agencies and Tenant's duty to pay Landlord for any costs or liability incurred by Landlord in connection with safety measures, containment and/or clean-up of environmental matters.

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25. BROKERAGE. Tenant represents and warrants that Tenant has dealt with no broker or agent in connection with the consummation of this Lease.

26. LANDLORD STATUS. Landlord warrants and represents that it shall remain in existence as a body corporate and politic of the Commonwealth of Pennsylvania for the entire Term of the Lease.

27. NOTICES. All notices, requests and other communications under this Lease shall be effectively given only if in writing and sent by United States registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized and receipted overnight courier service (such as Federal Express) guaranteeing next business day delivery, addressed as follows:

If intended for Landlord:

Department of Public Property
Municipal Services Building
1401 JFK Boulevard, 10th Floor
Philadelphia, PA 19102
Attention: Commissioner

If intended for Tenant:

or to such other addresses of which Landlord or Tenant shall have given notice as herein provided. All such notices, requests and other communications shall be deemed to have been sufficiently given for all purposes hereof on the third (3rd) business day after proper mailing thereof (in the case of United States registered or certified mail) or on the date of the delivery thereof to a courier service as aforesaid, and may be given on behalf of either party by its counsel.

28. CERTIFICATION OF NON-INDEBTEDNESS.

A. Tenant Not Indebted. Tenant hereby certifies and represents that Tenant and Tenant's officers and directors are not currently indebted to Landlord and will not at any time during the term of this Lease (including any extensions or renewals thereof) be indebted to Landlord, for or on account of any delinquent taxes (including, but not limited to, taxes collected by Landlord on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan

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satisfactory to Landlord has been established. In addition to any other rights or remedies available to Landlord at law or in equity, Tenant acknowledges that any breach or failure to conform to this certification may, at the option of Landlord, result in the withholding of payments otherwise due to Tenant and, if such breach or failure is not resolved to Landlord's satisfaction within a reasonable time frame specified by Landlord in writing, may result in the offset of any such indebtedness against said payments and/or the termination of this Lease for default.

B. Requirement for subcontractors. Tenant shall require all subcontractors performing work in connection with this Lease to be bound by the following provision and Tenant shall cooperate fully with Landlord in exercising the rights and remedies described below or otherwise available at law or in equity:

“Subcontractor hereby certifies and represents that Subcontractor and Subcontractor's parent company(ies) and subsidiary(ies) are not currently indebted to Landlord and will not at any time during the term of Tenant's Lease with Landlord, including any extensions or renewals thereof, be indebted to Landlord, for or on account of any delinquent taxes (including, but not limited to, taxes collected by Landlord on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to Landlord has been established. In addition to any other rights or remedies available to Landlord at law or in equity, Subcontractor acknowledges that any breach or failure to conform to this certification may, at the option and direction of Landlord, result in the withholding of payments otherwise due to Subcontractor for services rendered in connection with the Lease and, if such breach or failure is not resolved to Landlord's satisfaction within a reasonable time frame specified by Landlord in writing, may result in the offset of any such indebtedness against said payments otherwise due to Subcontractor and/or the termination of Subcontractor for default (in which case Subcontractor shall be liable for all excess costs and other damages resulting from the termination).”

29. NORTHERN IRELAND.

A. In accordance with Section 17-104 of The Philadelphia Code, Tenant by execution of this Lease certifies and represents that it currently is and will during the term of this lease continue to be, in compliance with the fair employment principles embodied in the “MacBride Principles” (i) Tenant (including any parent company, subsidiary, exclusive distributor or company affiliated with Tenant) does not have, and will not have at any time during the term of this Lease (including any extensions thereof), any investments, licenses, franchises, management agreements or operations in Northern Ireland or (ii) no product to be provided to the City under this Lease will originate in Northern Ireland unless Tenant has implemented the fair employment principles embodied in the MacBride Principles.

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B. In the performance of this Lease, Tenant agrees that it will not utilize any suppliers, subcontractors or subconsultants at any tier (i) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (ii) who will provide products originating in Northern Ireland unless said supplier, subconsultant or subcontractor has implemented the fair employment principles embodied in the MacBride Principles. Tenant further agrees to include the provisions of this Subsection (b), with appropriate adjustments for the identity of the parties, in all subcontracts and supply agreements which are entered into in connection with the performance of this Lease.

C. Tenant agrees to cooperate with the City's Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of The Philadelphia Code. Tenant expressly understands and agrees that any false certification or representation in connection with this Section 29 and/or any failure to comply with the provisions of this Section 29 shall constitute a substantial breach of this Lease entitling the City to all rights and remedies provided in this Lease or otherwise available in law (including, but not limited to, Section 17-104 of The Philadelphia Code) or equity. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. Section 4904.

30. DUTIES AND COVENANTS PURSUANT TO 17-1400

A. Tenant shall abide by the provisions of Section 17-1400 of the Philadelphia Code in awarding any contract(s) pursuant to this Lease as though such contracts were directly subject to the provisions of Chapter 17-1400, except that the exception set forth at Subsection 17-1406(8) shall apply to Tenant as if Tenant were listed in that subsection.

B. Unless approved by the City to the contrary, any approvals required by Section 17-1400 of the Philadelphia Code to be performed by the City Solicitor shall be performed by Tenant's General Counsel; any approvals required to be performed by the Director of Finance shall be performed by Tenant's Chief Financial Officer; and any approvals required to be performed by the Mayor shall be performed by Tenant's Executive Director.

31. MISCELLANEOUS PROVISIONS.

A. Force Majeure. Subject to the terms of the Facility Lease, Landlord and Tenant shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond their control which shall include, without limitation, all labor disputes, inability to obtain any material or services, civil commotion or Acts of God.

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B. Successors. The respective rights and obligations provided in this Lease shall bind and shall inure to the benefit of the parties hereto, their legal representatives, heirs, successors and assigns, provided, however, that no rights shall inure to the benefit of any successors of Tenant unless Landlord's written consent for the transfer to such successor has first been obtained as provided in Section 8.

C. Governing Law. This Lease shall be construed, governed and enforced in accordance with the laws of the Commonwealth of Pennsylvania.

D. Severability. If any provisions of this Lease or portions thereof shall be held to be invalid, void or unenforceable, the remaining provisions of this Lease or portions thereof shall in no way be affected or impaired and such remaining provisions or portions thereof shall remain in full force and effect.

E. Captions. Any heading preceding the text of the several Sections and Subsections hereof are inserted solely for the convenience of reference and shall not constitute a part of this Lease, nor shall they affect its meaning, construction or effect.

F. Certain Definitions. As used in this Lease, the word "person" shall mean and include, where appropriate, an individual, corporation, partnership or other entity; the plural shall be substituted for the singular, and the singular for the plural where appropriate; and words of any gender shall mean and include any other gender.

G. Waiver of Jury Trial. It is mutually agreed that Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other as to any matters arising out of or in any way connected with this Lease.

H. Time of the Essence. It is expressly understood and agreed that with respect to all responsibilities, covenants and conditions of Tenant herein, time is of the essence of this Lease. All payments are due by 4:00 p.m. on the due date. Any payment submitted by Tenant to cure a financial default must be received no later than 4:00 p.m. on the final day of the cure period or such payment will not be accepted by Landlord as a cure of the default.

I. Entire Agreement. This Lease (including the Exhibits and any Riders hereto) contains all the agreements, conditions, understandings, representations and warranties made between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations and proposals (either written or oral). This Lease may not be modified or terminated orally or in any manner other than by an agreement in writing signed by both parties hereto or their respective successors in interest. In the event of conflict between the terms of this Lease and the Facility Lease, the terms of the Facility Lease shall control.

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J. Further Assurances. PMA shall, from time to time at the request of the Company or the Lender, take any and all actions, including without limitation the amendment of the Financing Documents, the Facility Lease, the Lease or the execution of new or additional consents or other documents, which may be reasonably necessary or helpful to facilitate the financing of the Class A Facilities by Tenant with a Lender; provided, however, that such amendment or other document shall not in any way affect the Term or affect adversely any rights of PMA or the Company pursuant to this Lease.

K. Subject to Facility Lease. It is intended and agreed by the Parties that all substantive responsibilities relative to the Demised Premises be and are set forth in the Facility Lease. The terms of this Lease, to the extent they conflict with the Facility Lease, shall be subject to same. To the extent that provisions in this Lease add to the provisions of the Facility Lease, such shall be interpreted in light of the Facility Lease obligations and shall be made and interpreted consistently with same.

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IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their duly authorized officers or representatives as of the day and year first above written.

LANDLORD:

Approved as to Form:

Per: _____

By: _____
Title: _____

TENANT:

Witness: _____

By: _____
Title: _____

(Corporate Seal)

City of Philadelphia

BILL NO. 110517 continued

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City of Philadelphia

BILL NO. 110517 continued

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on November 17, 2011. The Bill was Signed by the Mayor on November 29, 2011.



Michael A. Decker
Chief Clerk of the City Council