

LEASE

DATED _____, 2022

BETWEEN

THE CITY OF PHILADELPHIA

AND

CP 2023

**FOR PREMISES LOCATED ALONG THE SOUTHERN SIDE OF BENJAMIN FRANKLIN
PARKWAY BETWEEN THE VINE STREET EXPRESSWAY, 21ST STREET, AND 22ND
STREET, IN PHILADELPHIA, PENNSYLVANIA**

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[To follow]

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LEASE

[Calder Museum, Benjamin Franklin Parkway & 21st Street]

THIS LEASE (“**Lease**”), dated _____, 2022 (the “**Effective Date**”), is between the City of Philadelphia (the “**City**”), acting through its Department of Parks and Recreation, and CP 2023, a Pennsylvania nonprofit corporation (the “**Tenant**”). City and Tenant are each a “**Party**” and collectively are the “**Parties**.”

BACKGROUND

A. The City owns the parkland bounded by North 21st Street, the outer eastbound lanes of Benjamin Franklin Parkway, the Vine Street Expressway, and 21st Street (the “**Premises**”). The Premises lie within the formal boundaries of Benjamin Franklin Parkway in Philadelphia, Pennsylvania. The Premises is more fully described in **Exhibit A** to this Lease.

B. The Premises are under the jurisdiction of the City’s Department of Parks and Recreation (the “**Department**”).

C. Tenant is a nonprofit supporting organization of the Barnes Foundation, a Pennsylvania non-profit corporation (the “**Barnes**”), created to support the Barnes’ mission and programs.

D. Tenant has raised funds to design, construct, and endow a museum building and surrounding landscape dedicated to display the artwork of Alexander Calder, other Calder family members, and other fine art exhibitions (the “**Building**”). The Building, as operated to display artwork and provide related programs, together with the surrounding land on the Premises, is the “**Museum**.”

E. The Calder Foundation (the “**Calder Foundation**”) controls the lending and display of many works of art by Alexander Calder and other Calder family members.

F. Tenant executed an agreement dated July 26, 2021, with the Calder Foundation and Barnes under which the Barnes may borrow artwork from the Calder Foundation to display in the Building (the “**Collaboration Agreement**”). Tenant has delivered a copy of the Collaboration Agreement to the City. Pursuant to the Collaboration Agreement, the Barnes will operate, manage, and maintain the Museum.

G. Before executing this Lease, Tenant inspected and studied the Premises pursuant to an Access License Agreement between the City and Tenant dated November 19, 2020. A copy of the Access License Agreement is attached to this Lease as **Exhibit B**.

H. Under the Federal Land and Water Conservation Fund Act of 1965 (the “**LWCF**”), the Premises is restricted to use solely for outdoor public recreation. Under the LWCF, Tenant’s construction and operation of the Museum may legally require the City to obtain new land, or otherwise provide land, as substitute outdoor public recreation land of at least equivalent recreational usefulness and financial value as the land occupied by the Building.

I. A high-pressure force water main (the “**Water Main**”) crosses the Premises in a location that would preclude Tenant’s construction of the Building. Therefore, Tenant must relocate the Water Main. Tenant intends to execute an agreement (the “**Private Cost Agreement**”) with the City, acting through the Philadelphia Water Department, pursuant to which Tenant will relocate the Water Main at Tenant’s sole cost and expense and in accordance with plans and specifications approved in advance by the Water Department.

J. By Bill _____, certified _____, 2022, Philadelphia City Council authorized the Commissioner of Parks and Recreation to execute this Lease on the City’s behalf. A copy of Bill _____ is attached as **Exhibit C**.

K. This Lease provides for City’s leasing the Premises to Tenant.

ACCORDINGLY, City and Tenant, intending to be legally bound, agree as follows:

DEFINITIONS

In this Lease, words defined in the Preamble and Background have their assigned meanings, and the words and phrases defined below have the meanings assigned to them below.

“**Additional Rent**” means all sums other than Rent which Tenant is obligated to pay to City under this Lease.

“**Affiliate**” means any person or entity that (1) directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Tenant or (2) owns 25% or more of the equity interest that is held beneficially or of record in Tenant.

“**Alteration**” means any alteration, repair, restoration, replacement, reconstruction, or other change to the exterior of an Improvement following its initial construction, and any change to the exterior portion of the Premises. “Alteration” does not include changes to the interior of any Improvement.

“**Applicable Laws**” include

1. all present and future laws, statutes, requirements, ordinances, codes, orders, judgments, regulations, and administrative or judicial determinations, even if unforeseen or extraordinary, of every municipal, county, state, or federal governmental or quasi-governmental legislative body, executive, authority, court, or agency that now or in the future has jurisdiction over the Premises, the Tenant, and this Lease, or over any of them;

2. A. Environmental Laws,

B. federal and Commonwealth of Pennsylvania laws relating to accessibility to, usability by, and discrimination against, disabled individuals,

C. the Philadelphia Home Rule Charter and the Philadelphia Code,

D. the Department’s regulations,

E. the LWCF;

3. all covenants, restrictions, and conditions of record which may be applicable to Tenant or to all or any portion of the Premises, or to the use, occupancy, possession, operation, Maintenance, Repair, Alteration, or restoration of any of the Premises,

even if compliance with them necessitates structural changes to the Improvements or the making of new Improvements, or results in interference with Tenant's use or enjoyment of all or any portion of the Premises.

"Approved Designs" has the meaning assigned to it in Section 7.3.

"Base Funding" is defined in Section 6.1.1.

"Building" means a building constructed on the Premises in accordance with Section 7.1 for the purposes listed in Section 5.2, together with all systems serving it for heating, ventilating, cooling, electricity, gas, and communication, and other building systems, and all appurtenances to any of them. The Building is an Improvement.

"Business Day" means each weekday that the City's offices are open for regular business, not including the offices of police, fire, and other essential personnel.

"Cash in Hand" means cash and other liquid assets, including equity securities that can be readily sold to generate cash.

"Certificate of Occupancy" means the document issued by the City of Philadelphia Department of Licenses and Inspections that confirms the completion of construction of the Building.

"City" is defined in the Preamble to this Lease and includes all of the City's departments, boards, offices, commissions, officials, officers, employees, agents, representatives, successors, and assigns.

"City Conduits" means all City-owned public utility lines and conduits that as of the Effective Date run under any portion of the Premises.

"City's Estate" means all the City's right, title, and interest in the Premises, the Improvements, and the benefits due and accruing to the City under this Lease.

"City Event" has the meaning assigned to it in Section 6.4.

"Claim" has the meaning assigned to it in Section 10.1.0.

"Commencement Date" has the meaning assigned to it in Section 2.4.

"Commissioner" means the City of Philadelphia Parks and Recreation Commissioner and any official who succeeds to the legal powers and duties of the Commissioner.

“**Conditions Precedent**” has the meaning assigned to it in Section 2.4.

“**Contamination**” includes a Hazardous Substance in, on, or about the Premises which is not contained in accordance with Environmental Laws and which may require remediation or removal under Environmental Laws.

“**Contractor**” includes the Barnes and each other person or firm hired by Tenant to perform any of Tenant’s obligations or exercise any of Tenant’s rights under this Lease, and any person or firm hired as a subcontractor by a person or firm hired by Tenant.

“**Control**” includes the possession of the direct or indirect power to cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, options to acquire or convert securities, exercise of membership powers, by contract, family relationship or otherwise.

“**Deadline to Start Construction**” has the meaning assigned to it in Section 7.4.

“**Default Rate**” means that interest rate that is the lesser of (1) four percentage points more than the Prime Rate, or (2) the highest rate permitted by Applicable Laws. The Default Rate under this Agreement changes as often as, and when, the Prime Rate changes or changes in Applicable Laws occur, as the case may be.

“**Department**” means the City of Philadelphia Department of Parks and Recreation and any department, board, commission, or agency that succeeds to the legal powers and duties of the Department.

“**Draw**” is defined in Section 6.1.3.A.

“**Economic Opportunity Plan**” means the plan set forth in **Exhibit K**.

“**Endowment**” is defined in Section 6.1.

“**Endowment Agreement**” is defined in Section 6.1.2 and the approved form of which is set forth in **Exhibit J**.

“**Environmental Laws**” means those Applicable Laws pertaining to Hazardous Substances and Contamination.

“**Estoppel Certificate**” has the meaning assigned to it in Section 20.1.

“**Event of Default**” has the meanings assigned to it in Section 14.1.

“**Extended Deadline to Start Construction**” has the meaning given to it in Section 7.4.1.

“**Fairmount Park System**” means all the parks and facilities under the jurisdiction of the Department.

“Force Majeure Event” includes

1. strikes or lockouts not directly related to Tenant’s construction of the Improvements or its operation, management, Maintenance, and Repair of the Premises and Improvements;
2. fire or other casualty not caused by Tenant or any of its Contractors;
3. war, riot, insurrection, acts of terrorism, embargoes, national conflicts, and war;
4. earthquake, hurricane, tornado, or other extreme weather conditions;
5. pandemic, epidemic, or other public health emergency;
6. explosion not caused by Tenant or any of its Contractors;

where the event or occurrence disrupts Tenant’s performance under this Lease and Tenant is unable to avoid or overcome the event’s or occurrence’s disruption by the exercise of reasonable due diligence.

“Hazardous Substances” include

1. any hazardous or toxic substances, materials or wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302);
2. Hazardous Chemicals as defined in the OSHA Hazard Communication Standard;
3. Hazardous Substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et. seq.;
4. Hazardous Substances as defined in the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.;
5. all substances now or hereafter designated as “hazardous substances,” “hazardous materials,” “hazardous wastes,” or “toxic substances” under any other federal, state or local laws or in any regulations adopted and publications promulgated pursuant to any of those laws, and amendments to all those laws and the regulations to them;
6. substances, materials, and wastes which are or become regulated under any applicable local, state or federal Environmental Law; and
7. asbestos, flammable materials, volatile hydrocarbons, industrial solvents, explosives, chemicals, radioactive material, petroleum, petroleum products, natural gas, and/or synthetic gas.

“Imposition” includes all taxes (including possessory interest, real property, ad valorem, and personal property taxes), assessments, charges, fees, license fees, municipal liens, levies, excise taxes, impact fees, or imposts, whether general or special, ordinary or extraordinary, which may be directly or indirectly levied, assessed, charged, or imposed by any governmental or quasi-governmental authority,

1. against, or which may be or become a lien or charge upon, all or any portion of the Premises and the Improvements, or either of them;
2. upon the leasehold estate created by this Lease;
3. upon Tenant’s use and occupancy of the Premises and Improvements, or Tenant’s activities under this Lease; and
4. in connection with the maintenance of security and fire alarm and fire suppression systems in, on, or about the Premises and the Improvements, or either of them.

“Improvements” means all existing and future human-made structures and physical developments in, on, and under the Premises. “Improvements” does not include

1. Calder Family Artwork, other works of art, and any other personal property located within any of the Improvements;
2. Tenant’s furniture, fixtures, and equipment; and
3. City Conduits.

“Indemnified Parties” has the meaning assigned to it in Section 10.1.0.

“Initial Construction” means Tenant’s construction of the Building and other Improvements in connection with its original development on the Premises for the Primary Use under this Lease.

“Initial Term” has the meaning assigned to it in Section 2.2.

“Initial Term Expiration Date” has the meaning assigned to it in Section 2.2.

“Institutional Standards” means the standards of conduct and business practices customarily engaged in by facilities comparable to the Museum, such as the Rodin Museum in Philadelphia and the Woodmere Art Museum in Philadelphia.

“Insurance Proceeds” means all amounts received from an insurance carrier under property insurance coverage for the Premises and Improvements, after deducting the reasonable fees and expenses of collection, including reasonable attorneys’ fees and experts’ fees.

“Lease Recognition Agreement” has the meaning given it in Section 20.3.

“**Lease Year**” means each full year that starts on the Commencement Date or on an anniversary of the Commencement Date and ends the day before the next anniversary of the Commencement Date.

“**LEED**” has the meaning given it in Section 7.2.2.

“**LWCF**” means (A) the federal Land and Water Conservation Fund Act of 1965, Pub. L. 88-578, 78 Stat 897, 16 U.S.C. 460l-4 et seq.; (B) all federal and Commonwealth of Pennsylvania regulations promulgated pursuant to that act; and (C) all manuals, interpretations, and directives issued by any federal or Commonwealth of Pennsylvania agency regarding or pursuant to that act, as each of (A), (B), and (C) may be amended from time to time.

“**Maintain**” and “**Maintenance**” mean all necessary and reasonably prudent measures, whether ordinary or extraordinary, to preserve and keep up any real or personal property, subject to express limitations, requirements, and conditions set forth in the Lease. “Maintain” and “Maintenance” do not include Repairs.

“**Operating Term**” has the meaning assigned to it in Section 2.3.

“**Partial Taking**” has the meaning assigned to it in Section 13.1.

“**Party**” and “**Parties**” are each defined in the preamble to this Lease.

“**Premises**” means the land described in **Exhibit A** and all Improvements and their appurtenances on the land. The Premises do not include any public utility lines or conduits or any public rights-of-way, but do include Tenant’s lines, conduits, and connections to any public utility lines and conduits in, on, or about the Premises.

“**Prime Rate**” means the prime rate published in the Wall Street Journal on the first business day of the then-current calendar month.

“**Prohibited Transfer**” has the meaning assigned to it in Section 16.1.

“**Public Access Plan**” has the meaning assigned to it in Section 2.4.6.

“**Recorder of Deeds**” means the Recorder of Deeds for Philadelphia County, Pennsylvania.

“**Releasers**” means Tenant and its successors, assigns, officers, employees, Contractors, and any person claiming by, through, or under Tenant or any of them.

“**Repair**” means all necessary and prudent repairs, replacements, and renewals, whether ordinary or extraordinary, or whether capital in nature, subject to express limitations and requirements set forth in the Lease regarding Alterations.

“**Revenues**” includes (1) all revenues, however characterized, that Tenant receives from fees and charges it imposes in connection with operation of the Premises and Improvements, and

(2) all donations, contributions, sponsorships, and gifts to Tenant, related to naming rights or any other matter related to the Premises and Improvements.

“**Risk Manager**” means the City of Philadelphia Deputy Finance Director and Risk Manager and any official who succeeds to the legal powers and duties of the Risk Manager.

“**Lease**” has the meaning assigned to it in the Preamble of this Lease.

“**Lease Ending Date**” means the date this Lease expires, terminates, or otherwise ends.

“**Taking**” has the meaning assigned to it in Section 13.1.

“**Tax Year**” is defined in Section 4.1.3.

“**Tenant**” has the meaning assigned to it in the Preamble of this Lease.

“**Term**” is defined in Section 2.1.

“**Termination Notice**” has the meaning assigned to it in Section 12.2.1.

“**Total Project Budget**” means all the projected costs and expenses for Tenant to complete its proposed Initial Construction under this Lease, including “soft costs” for studies, design, and engineering, as well as “hard costs” for construction. On the Effective Date, Tenant’s Total Project Budget is approximately \$40 million.

“**Total Taking**” has the meaning assigned to it in Section 13.1.

ARTICLE 1 LEASE

1.1. Lease. Subject to the provisions of this Lease, City leases to Tenant and Tenant leases from City the Premises, for the Term, together with all improvements and appurtenances that in any way belong to the Premises.

1.2. No Representations or Warranties. City shall deliver possession of the Premises to Tenant on the Commencement Date. City does not make any express or implied representation or warranty to Tenant regarding the Premises, the condition of the Premises, the Premises compliance with Applicable Laws, or the Premises’ suitability for Tenant’s use of the Premises as contemplated by this Lease.

1.3. Condition. Tenant accepts possession of the Premises on the Commencement Date subject to the following matters:

1.3.1. All Applicable Laws.

1.3.2. The “AS IS” condition and state of repair of the Premises, including all surface and subsurface conditions and improvements, all latent and patent defects in the Premises, and all things in, on, about, and under the Premises.

1.3.3. All present building restrictions and regulations and present and future zoning laws which are of general application in the City or specific application to the Premises.

1.3.4. Violations of Applicable Laws that might be disclosed by an examination and inspection or search of the Premises by any federal, state, county or municipal department or authority having jurisdiction over the Premises.

1.3.5. Encumbrances, liens, encroachments on or affecting the Premises, whether apparent or that would be disclosed by a complete property survey and title search done in accordance with ALTA standards.

1.3.6. Existing uses of the Premises and uses affecting the Premises, and all agreements and restrictions of record affecting the Premises.

1.3.7. The nature or usability of the Premises, or the use or uses to which the Premises or any part of the Premises may be put.

1.3.8. The City’s title to the Premises and any defects in the City’s title.

1.4. Tenant Inspection. Tenant confirms that, pursuant to the Access License Agreement, Tenant has performed all inspections, studies and tests of the Premises it desired. Tenant enters into this Lease and takes possession of the Premises under this Lease based solely on Tenant’s inspection and investigation of the Premises pursuant to the Access License Agreement.

1.5. No Waste. Tenant shall not knowingly cause or, to the extent subject to Tenant’s reasonable control, permit any physical waste, damage, deterioration, or injury to the Premises or the City’s Estate.

1.6. Leasehold Only. Nothing contained in this Lease creates, grants, conveys, or gives to Tenant any legal title, easement, or other interest in the Premises other than the leasehold interest created by this Lease.

1.7. No Obligation on City To Appropriate or Spend Money. Despite any other provision of this Lease, this Lease does not obligate the City to appropriate or spend money at any time or for any reason, or to incur any cost or expense at any time or for any reason.

1.8. LWCF Restrictions and Requirements. Some or all of the Premises may be subject to use requirements and restrictions under the LWCF. If construction of the Improvements is deemed by a Commonwealth of Pennsylvania or federal agency with jurisdiction under the LWCF to be a “conversion” of the Premises under the LWCF, then Tenant shall promptly

1.8.1. cooperate in good faith with the City to address issues raised by the conversion through their final resolution;

1.8.2. use Tenant's good faith, diligent efforts to assist the City in obtaining all necessary Commonwealth and federal approvals pursuant to the LWCF to remove or resolve the use requirements and restrictions and to provide substitute land for that portion of the Premises deemed converted under the LWCF; and

1.8.3. pay all the City's reasonable costs and expenses to satisfy LWCF requirements, including (A) to identify and acquire sufficient eligible substitute land, (B) to obtain all appraisals, studies, analyses, and reports, for the substitute land and the Premises that the LWCF requires; (C) to prepare and submit all applications to Commonwealth of Pennsylvania and federal agencies to obtain final approval of the conversion; (D) to file and prosecute all appeals as may reasonably be necessary for the City to obtain final approval of the conversion; and (E) to hire consultants to assist the City in preparing and submitting the City's application to obtain final approval of the conversion.

1.9 Tenant's Interest Subject to City's Rights. Tenant's interest in the Premises under this Lease is subject in all respects to the City's right at all times and from time to time to maintain, repair, replace, and to perform all other necessary, prudent and desirable work on or to, City Conduits, if any, provided that the City performs its work so as to not unreasonably interfere with Tenant's possession of the Premises or Tenant's use of any Improvements on the Premises.

ARTICLE 2

TERM: INITIAL TERM, COMMENCEMENT DATE; RENEWAL TERM

2.1. Term. The term of this Lease (the "**Term**") includes the Initial Term and the Operating Term.

2.2. Initial Term. The initial term of this Lease is up to one year (the "**Initial Term**"). The Initial Term starts on the Effective Date and expires at 11:59:59 PM the earlier to occur of the following: (1) the day that is one day before the first anniversary of the Effective Date, or (2) the fifth Business Day after Tenant has delivered notice to the Commissioner that Tenant is ready to proceed with construction of the Building and Improvements (the "**Initial Term Expiration Date**").

2.3. Operating Term. The "**Operating Term**" under this Lease begins on the Commencement Date and expires at 5:00 p.m. on the 99th anniversary of the Commencement Date.

2.4. Operating Term Commencement Date; Conditions Precedent. The "**Commencement Date**" is the date that all the following conditions (the "**Conditions Precedent**") have been satisfied:

2.4.1. The City Council of the City must have enacted ordinances that have become law to permit Tenant to construct the Improvements.

2.4.2. Tenant must have obtained the Commissioner's written approval of Tenant's Total Project Budget.

2.4.3. Tenant must have demonstrated, to the reasonable satisfaction of the Commissioner, that Tenant has raised funds in an amount equal to or exceeding the Total Project Budget in readily available funds. To satisfy this condition, Tenant shall promptly provide all documents and materials reasonably requested by the Commissioner for the Commissioner to determine whether Tenant has raised the necessary funds. Documents that may help the Commissioner determine whether Tenant has raised the required funds include evidence of Tenant's Cash in Hand, written irrevocable donation pledges and their timing, and executed loan and grant agreements. Tenant shall submit donation and pledge information by individual donation or pledge but may redact the names of donors who wish to remain anonymous.

2.4.4. Tenant must have obtained final, unappealable zoning use registration and building permits for the Improvements.

2.4.5. There must be no pending litigation or bona fide threat of litigation or claim (as evidenced by a writing asserting a threat of litigation or claim), that (a) challenges or seeks to prevent the execution or performance of this Lease or that (b) otherwise challenges or seeks to prevent the exercise of the City's or Tenant's rights, or the performance of City's or Tenant's obligations, under this Lease.

2.4.6. Tenant must have submitted to the Commissioner rules and regulations that ensure persons of all financial means have affordable access to the galleries in the Improvements (the "**Public Access Plan**"). Tenant must have obtained the Commissioner's written approval of the Public Access Plan, in the Commissioner's reasonable discretion.

2.4.7. Tenant must have Cash in Hand of not less than \$5 Million.

2.4.8. Tenant must have delivered to the Commissioner a written statement that Tenant is ready to start physical construction of the Building and other Improvements. Tenant must deliver its statement at least 15 Business Days before it intends to start physical construction on the Premises to enable the Department to make needed arrangements to prepare for Tenant's work. This condition is deemed satisfied 15 Business Days after the Commissioner receives Tenant's notice pursuant to this Section 2.4.8.

2.5. Confirmation of Commencement Date. Promptly following satisfaction of the Conditions Precedent, City and Tenant shall execute a letter confirming the Commencement Date, substantially in the form of the letter set forth in **Exhibit D**.

2.6. Failure of Conditions. If any Condition Precedent has not been satisfied on or

before the first anniversary of the Effective Date (“**Conditions Period**”), then Tenant may, on or before 5:00 p.m. on the tenth day following the end of the Conditions Period (“**Conditions Deadline**”),

2.6.1. terminate this Lease by providing written notice to the City of the unfulfilled condition and Tenant’s intent to terminate the Lease, and this Lease will terminate on the 30th day following the City’s receipt of Tenant’s notice;

2.6.2. extend the Conditions Period one time for six calendar months by delivering written notice of the extension to the Commissioner.

ARTICLE 3
RENT

3.1. Rent. As rent for the Term Tenant shall pay to City \$1.00.

3.2. Additional Rent. Tenant shall pay Additional Rent as provided elsewhere in this Lease.

3.3. Triple Net Lease.

3.3.1. This Lease is what is commonly called a “Triple Net Lease,” and beginning on the Effective Date, Tenant shall pay all costs and expenses arising from or related to its use and occupancy of the Premises under this Lease. In addition, throughout the Term, Tenant may not charge to City, setoff against any amounts it owes to City, or otherwise deduct from amounts it is obligated to pay City under this Lease, any costs or expenses arising from or related to Impositions, taxes, liens, charges, deductions or expenses of any nature in connection with the ownership, operation, maintenance, repair, occupancy or use of the Premises or the Improvements.

3.3.2. Without limiting **Section 1.7**, throughout the Term, the City (1) is not obligated to pay for any costs, expenses, or charges of any kind or nature respecting the Premises or the Improvements, and (2) is not obligated to render any services of any kind to or for Tenant or the Premises or the Improvements.

3.3.3. During the Term, except as otherwise set forth in Article 12 [Damage or Destruction], Tenant assumes all risks of damage to or destruction of the Premises and Improvements by fire or other casualty, and every other event which might deprive Tenant of the use or occupancy of the Premises or the Improvements, despite any statutes or laws to the contrary now or in the future in effect, subject only to the provisions of this Lease.

3.3.4. Without limiting the generality of the foregoing provisions of this Section 3.3, Tenant is not entitled to, and shall not, terminate this Lease or be entitled to abatement or reduction of Tenant’s obligations and liabilities under or related to this Lease in any way by any of the following:

1. Any defect in any part of the Premises or of the Improvements unless (i) the defect is discovered within two years following the Effective Date and stems from a pre-existing condition prior to the Effective Date which was not readily discernable during Tenant’s due diligence investigation under the Access License Agreement, (ii) the defect prevents or frustrates Tenant’s ability to perform its obligations under this Lease and (iii) the City in its sole discretion elects not to cure the defect.

2. Any material, permanent restriction of or interference with the use of the Premises or the Improvements by governmental authorities.

3.3.5. If either of the conditions stated in Section 3.3.4.1 or 3.3.4.2 occur, and if Tenant wishes to terminate this Lease, then not later than 30 Business Days after Tenant discovers the defect, Tenant must deliver a written notice to the Commissioner stating its decision to terminate the Lease and setting forth in detail the reasons. If Tenant delivers a timely termination notice in compliance with the immediately preceding sentence, then this Lease terminates, and the Lease Ending Date occurs, at 5:00 PM on the 180th day following Tenant’s delivery of its termination notice, or any earlier date that Tenant and the Commissioner may agree to in writing. If Tenant does not timely deliver a termination notice to the Commissioner, then Tenant is deemed to have elected to continue the Lease and to address the property defect at Tenant’s sole cost and expense.

3.3.6. If Tenant terminates this Lease in accordance with Section 3.3.5, then no later than the Lease Ending Date, Tenant at its sole cost and expense shall quit the Premises and restore them under and in accordance with Article 15.

ARTICLE 4

PAYMENT OF TAXES AND OTHER CHARGES

4.1 Payment of Impositions.

4.1.1. Starting on the Commencement Date, and throughout the remainder of the Term, Tenant shall pay and discharge all Impositions, if any, before delinquency and before any fine, interest or penalty is assessed by reason of its nonpayment. Tenant shall arrange to receive, effective on the start of the Operating Term, all Imposition notices and bills from each governmental and quasi-governmental authority that levies, assesses, charges, or imposes Impositions.

4.1.2. If at any time during the Term the methods of taxation prevailing at the Commencement Date are altered so that in lieu of any Imposition there is levied, assessed or imposed an alternate tax or charge, however designated or characterized, then the alternate tax or charge is an Imposition for the purpose of this **Section 4.1** and Tenant shall pay and discharge that Imposition as and when required by this **Section 4.1**.

4.1.3. If the start of the Operating Term is a day other than the first day of a “tax” or “fiscal” year (that is, July 10 (a “**Tax Year**”), City and Tenant shall prorate all Impositions so that Tenant is obligated to pay only for those Impositions payable in connection

with the Premises and Improvements on and after the start of the Operating Term. The proration is to be based on the ratio that the number of days passed in the then-current Tax Year bears to 365. City and Tenant shall similarly prorate payment of Impositions with respect to the final Tax Year during the Term.

4.1.4. Despite the provisions of **Section 4.1** above, if prior to the start of the Operating Term or after the Lease Ending Date, any Imposition is not payable with respect to the Premises or the Improvements because the City is exempt under Applicable Law from paying the Imposition, then that Imposition will not be prorated, and Tenant shall pay 100% of that Imposition attributable to the applicable Tax Year to the extent that Tenant is not exempt under Applicable Law from paying the Imposition or to the extent necessary to relieve the City of all obligation to pay the Imposition. If the total Imposition is reduced to apply for only the portion of the Tax Year that the Term is in effect, then Tenant is obligated to pay only the applicable amount of the Imposition.

4.2. Reports to City. Throughout the Term, Tenant shall promptly provide to the City copies of all of Tenant's filings and submissions to federal and Commonwealth of Pennsylvania taxing authorities, including annual tax returns or reports. Throughout the Term, Tenant shall promptly provide to the City copies of all audits, if any, of Tenant's finances.

4.2.1. If Tenant's finances are audited together with the Barnes' finances, then Tenant is obligated to provide to the City only those portions of the Barnes' audited financial statements as apply to Tenant.

4.2.2. If the Barnes' audited financial statements cannot practicably be redacted to show only the information relating to Tenant, then Tenant shall provide to the City in a separate document all the information pertaining to Tenant's finances from the Barnes' audit together with a written statement from Tenant's president or treasurer certifying that the information is a true, correct, and complete copy of the information in the Barnes' audit that relates to Tenant and its finances.

4.3. Contesting Impositions; Exemption. If Tenant desires to contest or otherwise review any Imposition by legal or administrative proceeding in accordance with Applicable Laws, Tenant shall give City written notice of its intention to contest the Imposition.

4.3.1. Tenant shall pay any bond, security, or other payment required by Applicable Laws as a condition to the contest or review, or that is reasonably required to be maintained while the contest or review is pending.

4.3.2. Tenant shall pursue the contest or other proceeding with reasonable diligence, solely at Tenant's cost and expense, and free of cost and expense to the City.

4.3.3. Tenant shall promptly pay the amount finally determined to be due, if any, together with all related costs, expenses, interest, additions, fines, penalties, and other sums, and Tenant shall promptly take all other actions determined to be required by the Applicable Laws.

4.3.4. The City acknowledges that Tenant will apply for a real estate tax exemption from the appropriate office of the City in accordance with Applicable Laws. The City makes no representation or warranty whether Tenant will qualify for or obtain any exemption it applies for.

4.3.5. Nothing in this Lease prohibits Tenant from seeking or obtaining an exemption from any Imposition in accordance with Applicable Law.

4.4. Utilities. Starting on the Commencement Date and continuing throughout the Operating Term, Tenant shall, at its sole cost and expense, arrange for all utility services to the Premises that are necessary or desirable for operation of the Premises and Improvements.

4.4.1. Tenant shall arrange for all metering necessary or desirable to measure Tenant's use of utilities on the Premises and Improvements.

4.4.2. Tenant shall arrange to receive bills directly for all utility services to the Premises and Improvements.

4.4.3. Tenant shall pay before delinquency all costs, fees, charges, taxes, and assessments for, as applicable, water, sewer, stormwater, gas, electricity, and other public or private utilities used on or furnished to the Premises and the Improvements during the Term. Tenant shall make those payments directly to the utility providers. Tenant shall not permit any judgment or lien to be filed against any part of the Premises relating to failure to pay for any utility or utility service provided to the Premises unless Tenant contests the judgment or lien in the manner permitted for contesting Impositions provided in Section 4.3.

4.4.4. Tenant is solely responsible for all utilities and utility service provided to the Premises and the Improvements during the Operating Term, including all interest and penalties arising from any late payment of bills and invoices caused by Tenant.

4.4.5. Without limiting the effect of Section 1.7, throughout the Term the City is not obligated to pay for utilities or utility service to Tenant, the Premises, or the Improvements.

4.5. Payment by City. Unless Tenant is contesting any Impositions as provided in **Section 4.3** above, City may, in its sole discretion but without obligation, at any time after the date any Imposition is delinquent, give written notice to Tenant specifying the delinquency. If Tenant continues to fail to pay or contest the Imposition as set forth above, then at any time after ten days following Tenant's receipt of the City's written notice, the City may, in its sole discretion, pay the Imposition specified in the City's notice. Promptly following the City's delivery of written demand to Tenant, Tenant shall reimburse and pay City all amounts paid or expended by City in the payment of the Imposition, with interest at the Default Rate from the date the City made the payment until repaid by Tenant, plus as an administrative fee an amount equal to 10% of the amount of the Imposition the City paid.

4.6. Transfer Taxes. Tenant shall pay all transfer taxes, if any, that may be due or

payable in connection with (1) the execution and delivery of this Lease; and (2) the recording of a memorandum of this Lease.

ARTICLE 5

USE: COMPLIANCE WITH APPLICABLE LAWS; SPECIFIC USE REQUIRED, USES PERMITTED, AND USES PROHIBITED

5.1. Compliance with Applicable Laws. Throughout the Term, Tenant shall occupy and use the Premises and conduct all its activities under this Lease in compliance with Applicable Laws.

5.1.1. Tenant may, at its own cost and expense, contest or review the validity or legality of any Applicable Laws, provided Tenant does so by appropriate legal or administrative proceeding that themselves comply with Applicable Laws, including posting a bond or other surety when required. During the proceeding, Tenant may refrain from complying with the Applicable Law that Tenant is contesting if compliance with that Applicable Law may legally be held in abeyance without subjecting the City to any civil or criminal liability of any nature due to failure to comply with that Applicable Law and without incurring a lien, charge, or liability against the Premises, the Improvements, or the City's estate in the Premises and the Improvements. Tenant may contest the validity or legality of any Applicable Law only if Tenant prosecutes the contest with reasonable due diligence.

5.1.2. Throughout the Term, Tenant shall promptly provide copies to the City of all citations, summonses, reports, or other notices (however characterized or labeled) received by Tenant that the Premises or any part of the Premises, some or all of the Improvements, or Tenant's use, occupancy, or operations on the Premises, violate any Applicable Laws, including any Environmental Law. Tenant is not obligated to notify the City of claims for personal injury or property damage or routine commercial litigation, except where the claim, if successfully prosecuted against Tenant, would reasonably be expected to impair Tenant's occupancy and use of the Premises in compliance with this Lease or to threaten Tenant's continued operation or existence.

5.2. Uses Required and Permitted. Throughout the Term, Tenant shall use the Premises, and shall cause the Barnes to use the Premises, only as follows:

5.2.1. To construct, maintain, and repair the Building and Improvements.

5.2.2. To possess and operate the Building, the Premises, and the Improvements primarily as a museum to display the artwork of Alexander Calder and other Calder family member artists ("**Primary Use**").

5.2.3. Tenant may operate the Premises and Improvements for other uses ancillary to and consistent with the Primary Use, including the following (collectively with the Primary Use, the "**Permitted Uses**"):

1. display the artwork by other artists or, with the prior written approval of the City, of an alternate artistic program developed by Tenant and the Barnes,
2. permanent collection exhibition galleries,
3. temporary exhibition galleries,
4. office space;
5. curatorial space,
6. conservation space,
7. space for art collection management,
8. event space for public, community and private events,
9. food and beverage preparation and service space,
10. retail space to display and sell souvenirs related to the Primary Use,
11. educational programs,
12. storage space,
13. restrooms,
14. off-street space for vehicles to drop-off and pick-up passengers going to or coming from the Improvements, and
15. similar uses ancillary to the Primary Use.

5.2.4. Other Uses Permitted. During the Term, Tenant may

1. keep routine cleaning and office materials, in reasonable amounts, on the Premises, but Tenant shall do so in accordance with all Applicable Laws;
2. serve food and beverages in the Building and outdoor areas of the Premises, subject to Applicable Laws, including obtaining all required licenses and permits and obtaining applicable insurance as required in Article 11; and
3. serve or permit alcoholic beverages in the Building or any of the other Improvements or on the Premises; but prior to serving or permitting any alcoholic beverages on the Premises, Tenant shall obtain, or shall cause event sponsors or caterers to obtain, all licenses and permits required by Applicable Laws for the sale or service of alcoholic beverages and obtain all liquor liability insurance which this Lease requires.

5.3. Tenant's Use Is A Material Inducement and Consideration to City.

5.3.1. Tenant's obligation under this Lease to occupy and use the Premises for the Primary Use

1. is a material consideration and benefit to the City under this Lease;
2. induced the City to decide, as a matter of public policy and for the public's benefit, to lease the Premises to Tenant for nominal rent, instead of the City using the Premises for a municipal development or other public use.

5.3.2. Tenant's failure to use and occupy the Premises for the Primary Use as required by this Lease would cause actual, direct, and substantial detriment to the City under this Lease. Therefore, from and after completion of the Building, and except only during periods of any Alteration or Repair, or as otherwise expressly permitted by this Lease, Tenant shall not cease using the Premises for the Primary Use.

5.4 Uses Prohibited Generally.

5.4.1. Tenant shall not use any portion of the Premises or Improvements for any purpose other than the Primary Use or the Permitted Uses expressly provided in this Lease.

5.4.2. Tenant shall not permit any portion of the Premises or Improvements to be used in any manner that would make possible a claim of adverse usage or adverse possession by the public or anyone else, or of implied dedication of all or any portion of the Premises or of the Improvements.

5.4.3. Tenant shall not permit any act to be done or any condition to exist in, on, or about any portion of the Premises or Improvements that may constitute a public or private nuisance or that may make void or voidable any insurance then in force with respect to all or any portion of the Premises or Improvements, or Tenant's use and operation of the Premises under this Lease.

5.4.4. Tenant shall not use the Premises or Improvements for any profit-making commercial purpose. Despite the immediately preceding sentence, strictly to generate revenue in support of Tenant's obligations under this Lease, Tenant may enter into one or more concession agreements with for-profit food and beverage businesses to operate food and beverage concessions on the Premises and Tenant may provide a gift shop selling items typical and appropriate in a fine arts museum setting.

5.4.5. Tenant shall not use the Premises or Improvements, or permit the use of either of them, for any partisan political purpose.

1. Without limiting the general prohibition stated above in this Section 5.4.5, Tenant shall not hold or permit any event in or on the Premises or Improvements (A) to promote a candidate for public office or a political party, or (B) to raise money for a candidate for public office, a political party, or a political action committee or other organization whose purpose is to promote political candidates, parties, or political agendas or positions.

2. Subject to the limitations on City Events set forth in Section 6.4, the prohibitions stated above in this Section 5.4.5 do not prohibit any City Event about a general municipal policy, initiative, or program, and do not prohibit a City department, board, commission, or official

from holding a community or public meeting or conducting municipal business in or on the Premises or Improvements.

5.5 Safe Use of Premises and Improvements. Tenant shall promptly take all necessary and prudent actions to

5.5.1. safely possess, occupy, use, Maintain, and Repair the Premises and the Improvements;

5.5.2. construct, reconstruct, manage, operate, Maintain, Repair, and, if necessary, replace the Improvements;

5.5.3. reasonably ensure the safety of persons and property in and on the Premises; and

5.5.4. fulfill Tenant's obligations under this Lease.

5.6. Economic Opportunity Plan.

5.6.1. Tenant has submitted to the City and the City has approved an economic opportunity plan ("**Economic Opportunity Plan**") setting forth Tenant's goals with respect to the participation of Minority, Female and Disabled Owned Disadvantaged Business Enterprises in the construction, Alteration, Maintenance, Repair, and operation of the Improvements and with respect to the employment of disadvantaged, minority and female persons. Tenant's Economic Opportunity Plan is attached as **Exhibit K** to this Lease and is incorporated into this Lease.

5.6.2. Tenant shall comply with its Economic Opportunity Plan in all phases of (1) Tenant's design, engineering, and construction of the Improvements, (2) Tenant's Alteration, Maintenance, and Repair of the Improvements and other parts of the Premises, and (3) Tenant's operation of the Improvements and other parts of the Premises, including in connection with the Primary Use and Permitted Uses.

5.7. Public Access; Affordability. The Premises are located on parkland along Benjamin Franklin Parkway, which traditionally has been open for free public recreation. It is important to the City that Philadelphia residents have access to the Premises and the Improvements to the greatest extent reasonably possible.

5.7.1. Once approved by the Commissioner, Tenant shall not amend its Public Access Plan without the Commissioner's prior written approval, in the Commissioner's reasonable discretion. Tenant shall submit its proposed amendments to the City for its comment at least 30 days prior to its planned implementation of them. A copy of Tenant's proposed Public Access Plan is attached as **Exhibit L**.

5.7.2. Tenant shall permit members of the public to come onto the outdoor areas of the Premises, except those spaces that Tenant reasonably must restrict access to for public safety and the security of Tenant's operations.

5.8. Use of Revenues. Tenant shall apply all Revenues it receives to help pay the costs of fulfilling its obligations under this Lease, including to pay associated salaries, Impositions, and license fees; to pay for Maintenance and Repairs on the Premises; and to fund a capital reserve to support Maintenance and Repairs and future replacement of capital elements of the Improvements. Tenant shall not spend any of the Revenues on any other facilities other than the Premises or on operations other than its operations on the Premises or under the Collaboration Agreement.

ARTICLE 6
SPECIAL PROVISIONS: ENDOWMENT; OPERATIONS; LANDSCAPING;
BOOKS AND RECORDS; NAMING AND SIGNS; FEE TO CITY; LWCF APPROVALS

6.1 Endowment. Without limiting the effect of Section 1.7, the City is not obligated to provide any operating or capital support for the Premises or the Improvements, or to Tenant for its operations and its occupancy and use of the Premises and Improvements. Therefore, Tenant shall cause the Barnes to establish and maintain an endowment dedicated to Maintenance and Repair of the Premises and Improvements, including periodic replacement or upgrade of capital elements, and to support Tenant’s performance of the Primary Use (the “**Endowment**”).

6.1.1. Within three years after the issuance of a Certificate of Occupancy for the Building, Tenant shall grant to the Barnes not less than \$20 million (the “**Base Funding**”) as a restricted fund from which the Barnes shall spend Endowment income only for the following purposes:

- A. Provide operating support to sustain the Primary Use and Permitted Uses.
- B. Pay costs and expenses to Maintain, Repair, and, as needed, make capital replacements to, the Premises and Improvements.

6.1.2. Tenant shall grant the Base Funding and Tenant’s future contributions to the Endowment under a written agreement between Tenant and the Barnes (the “**Endowment Agreement**”). A copy of the form of Endowment Agreement the City has approved is attached to this Lease as **Exhibit J**. Tenant shall execute an Endowment Agreement

(A) substantially in the form attached as Exhibit J, or

(B) if not substantially in the form attached as Exhibit J, then in a form that ensures payment for Maintenance and Repairs of the Premises and Improvements at least to the extent provided by the form attached as Exhibit J and that has been approved in advance by the City in writing, in the City’s reasonable discretion, for which Tenant shall present a copy of the proposed agreement to the Commissioner at least 30 Business Days before Tenant intends to sign the agreement.

Tenant shall deliver a complete copy of the fully executed Endowment Agreement to the City within three Business Days after it is fully executed.

6.1.3. Tenant shall cause the Barnes to establish the Endowment, maintain it, and apply it, in accordance with this Lease and the Endowment Agreement.

A. Tenant shall cause the Endowment to be restricted so that the Barnes may only spend Endowment income, not the Endowment principal. The parties acknowledge that the Barnes may make an election under Section 5548(c) of the Pennsylvania Nonprofit Corporation Law to adopt a total return investment policy, under which the term “income” means a percentage of the fair market value of the Endowment (the “**Draw**”), and no Draw consistent with the Barnes’ Section 5548(c) election is deemed an expenditure of Endowment principal.

B. Tenant shall cause the Endowment Agreement to provide the following:

(1) If Tenant and the Barnes (a) do not use the Premises for the Primary Use or a Permitted Use for one year and (b) for any three-month period during that time fail to Maintain and Repair the Premises and Improvements as is necessary for the Primary Use or Permitted Uses and to keep them neat and an attractive feature along Benjamin Franklin Parkway,

or

(2) If the Lease Ending Date occurs,

then the Barnes shall continually distribute payments (quarterly, or more frequently as needed to pay invoices or incurred costs) from the annual Draw of amounts that are necessary to pay any and all necessary and prudent Maintenance and Repair to any party, including the City, that assumes or becomes legally obligated to manage, Maintain, and Repair some or all of the Premises and Improvements;

subject, however, to the restriction that the Draw may be used only for Maintenance and Repair of the Premises and Improvements and may not be used for the programming or operations of the Premises and Improvements without the further agreement of Tenant and the Barnes (or, if the Lease Ending Date has occurred or Tenant ceases to operate, the further agreement only of the Barnes).

This Section 6.1.3.B and the obligations under it survive the Lease Ending Date.

C. If at any time Tenant and the Barnes, or either of them, come to an agreement with the City to resume tenancy of the Premises, then upon CP 2023 and the Barnes, or either of them, resuming tenancy of the Premises, the Barnes' use of the Draw reverts to its purposes under Sections 6.1.1. and 6.1.3 above and Sections 2 and 3 of the approved Endowment Agreement.

6.1.4. After the Tenant grants the Base Funding to the Barnes and causes the Barnes to establish the Endowment, whenever the Endowment principal declines below \$20 million, Tenant shall use commercially reasonable efforts to raise the necessary funds and grant them to the Barnes, or to cause the Barnes to raise the necessary funds, to restore the principal to at least \$20 million as soon as practically possible.

6.1.5. From time to time, the City may request in writing that the Tenant provide to the Commissioner a statement about the Endowment, setting forth its then-current balance, assets, and debts, together with supporting information the City may reasonably require. Tenant shall provide the report to the Commissioner, or shall cause the Barnes to provide the report, not later than 30 Business Days after the City's written request.

6.2 Collaboration Agreement. Pursuant to the Collaboration Agreement, the Barnes will operate, Maintain, and Repair the Building and other Improvements on Tenant's behalf, and the Calder Foundation will loan artwork to be displayed in the Building and on the Premises. Despite the provisions regarding Prohibited Transfers in Section 16.1, the City consents to the Collaboration Agreement. A Memorandum of the Collaboration Agreement is attached hereto as **Exhibit I**.

6.3 [Reserved.]

6.4 City's Use of Premises. The City is entitled to use the Premises, including spaces in the Building, up to four times each Lease Year for any purposes the City reasonably determines are necessary or desirable, including community meetings, official City events, and public meetings of City agencies (each use, a "**City Event**"). The City may hold each City Event without charge, except as provided below in this Section 6.4. Tenant shall permit the City to use the Premises as the City is entitled, subject to the following:

6.4.1. Tenant is not obligated to permit any City Event

1. that reasonably would be expected to damage the Building or other parts of the Premises, or unreasonably interfere with Tenant's operations;
2. on a day or at a time that would interfere with an event that Tenant previously scheduled; or
3. that would violate Section 5.4.5, which prohibits partisan political events on the Premises and Improvements.

6.4.2. The City shall submit all requests to schedule a City Event to Tenant through the Commissioner at least 20 Business Days in advance. Tenant is not obligated

to schedule an event requested by a City official that is not transmitted through the Commissioner.

6.4.3. If the City, in its discretion, desires to have food and beverage service during a City Event, then the City is obligated to (A) include that request in its written request under Section 6.4.2 to hold a City Event, and (B) confer with Tenant to arrange for timely payment of the food and beverage services. Tenant is not obligated to permit the City Event unless and until the City and Tenant reach agreement regarding payment for reasonable food and beverage services costs and expenses.

6.4.4. If a City Event requires materially additional security or cleaning services than Tenant's usual security and cleaning services, then Tenant shall determine its security and cleaning needs based on the City's request under Section 6.4.2 and promptly inform the Commissioner whether Tenant will require the City to pay for the additional security and cleaning. Within two Business Days after receipt of the Tenant's statement, the Commission shall inform Tenant whether the City will proceed with the City Event, cancel it, or reschedule it. Before Tenant is obligated to permit the City Event, the City must confer with Tenant to arrange for prompt payment of Tenant's reasonable food and beverage services costs and expenses for the materially additional security or cleaning services.

6.4.5. Tenant's usual staff on the Premises at the time of a City Event may attend the City Event to ensure the proper operation of the Building and care of the Premises. Tenant may have an appropriate number of staff attend each City Event held before or after Tenant's usual hours of operation. City is not obligated to pay the salary or other costs associated with Tenant having its staff on the Premises during a City Event, but before Tenant is obligated to permit the City Event the City must confer with Tenant to arrange for prompt payment of Tenant's reasonable costs and expenses for additional staff or additional staff time.

6.5. Non-Invasive Species. Throughout the Term, Tenant shall not plant or otherwise promote on the Premises any species of tree, flower, or other vegetation that is invasive in nature so that it displaces native species of vegetation. For purposes of this Section 6.5, an invasive species is any plant identified or listed as invasive with respect to the native species of vegetation of the Delaware Valley by the Commonwealth of Pennsylvania Department of Agriculture, the National Park Service and United States Fish and Wildlife Service, or the United States Department of Agriculture (or any successor agency or department to any of them).

6.6 Signs; Name of Premises; Publicizing the Premises

6.6.1. Signs: General Requirements. Throughout the Term, Tenant shall not place or permit any sign in, on, or about the exterior of the Building or the outdoor areas of the Premises without the prior written approval of the Commissioner and all other approvals required by Applicable Laws. Without limiting the general application of the preceding sentence, throughout the Term

A. Tenant shall not place or permit any sign on the exterior of the Building and outdoor areas of the Premises without the prior approval of the Philadelphia Art Commission; and

B. Tenant shall comply in all respects with the Department's regulations and policies regarding signs.

6.6.2. Naming Rights. Subject to Section 6.6.1, the Commissioner's prior written approval, and the other provisions of this Section 6.6, Tenant may name the Premises or any individual elements of them or of the Improvements in connection with any donations made to any party to the Collaboration Agreement to pay for Tenant's construction of the Improvements or in the future for any Alterations or Repairs. Tenant's naming rights under this Section 6.6.2 is strictly limited to the duration of the Term. Following the Commissioner's approval of any proposed name or names, Tenant shall promptly provide to the Commissioner a complete copy of each naming right agreement Tenant executes with respect to the Premises.

A. If paid to Tenant, Tenant may retain all Revenues paid to it for naming rights of the Premises and any individual elements of the Premises.

B. After the Lease Ending Date, the City may name or rename the Premises and any individual elements of it in the City's sole discretion.

6.6.3. Site Sign. Subject to Section 6.6.1, throughout the Term, Tenant shall maintain a prominent, clearly legible sign oriented toward Benjamin Franklin Parkway that reads as follows:

[Name of the Tenant's Building]
Fairmount Park

or other wording that the Commissioner approves in advance in writing. Tenant shall obtain the prior written approval of the Commissioner of the site sign.

6.6.4. Tenant's Stationery. At all times during the Term, Tenant shall use good faith efforts to include in all its written promotional and written advertising materials and on its web site a reasonably prominent statement that Tenant's Building is located on Fairmount Park land.

6.6.5. Prohibited Signs and Names. Despite the other provisions of this Section 6.6 and any other provisions of this Lease, Tenant may not name any part of the Premises or Improvement for, or place or permit any sign in, on, or about the Premises with, the name of any business or organization that manufactures, sells, promotes, or provides

1. tobacco or other smoking products or vaping products;
2. alcoholic beverages;

3. firearms or ammunition;
4. gambling; or
5. any product or activity that is prohibited from billboard advertisements or business operations within 1,000 feet of a school.

6.6.6. Publicity. Tenant shall use good faith efforts, and shall cause the Barnes to use its good faith efforts, to publicize the Premises and Improvements with the intent of making the Premises and Improvements attractive to individuals, families, schools, tourists and other groups of people. Tenant's publicity may include, without limitation, advertising in print media, radio, on line, and in other media; off-Premises billboards and signs; cooperating with the Philadelphia School District; contacting community groups and individual schools; and distributing brochures and literature to schools, community groups, and through appropriate tourism information outlets. In developing and implementing its publicity efforts, Tenant may work in cooperation with the other parties to the Collaboration Agreement.

6.6.7. Signs Permitted. Despite the other provisions of this Section 6.6, but subject nevertheless to Section 6.6.5, Tenant may place or permit (A) any sign required by any Applicable Law (for example, exit signs, parking signs, directional signs), and (B) temporary signs in connection with special or private events held on the Premises (for purposes of this Section 6.6.7, a temporary sign is one that is in place not longer than 10 days in a row, and not more than 30 days in any single Lease Year).

6.6.8. No Advertisements. Without limiting the application of other limitations and prohibitions set forth in this Section 6.6, Tenant shall not permit any advertisements on the Premises other than for programs and exhibits Tenant stages or hosts in the Improvements.

6.7 [Reserved.]

6.8 Benjamin Franklin Parkway Closures. The City closes Benjamin Franklin Parkway to vehicular traffic various times each year for special events, First Amendment parades and demonstrations, snow and ice, and for other reasons. In addition, from time to time Benjamin Franklin Parkway is closed due to unanticipated events, and it may be closed by the Commonwealth of Pennsylvania or federal authorities. Throughout the Term, Benjamin Franklin Parkway closures take precedence over Tenant's operation of the Premises and Improvements, and during Benjamin Franklin Parkway closures the City is not obligated to keep lanes of vehicular traffic open for access to and from the Premises.

6.9 Tented Events. Tenant shall not erect and maintain tents on the exterior portions of the Premises more often than as listed below. For purposes of this Section 6.9, erecting and maintaining a tent includes the time used to set up the tent and to take down and remove the tent:

6.9.1. From April through October:

- A. Two weekend days each month; and
- B. Four total days each month.

6.9.2. From November through March:

- A. Four weekend days each month; and
- B. Six total days each month.

ARTICLE 7 INITIAL CONSTRUCTION; ALTERATIONS

7.1. Initial Construction: Required Prior Approvals. Despite any other provision of this Lease, Tenant shall not start the Initial Construction or any other physical construction on the Premises until the Commencement Date has occurred and Tenant has obtained each of the following approvals:

1. The Commissioner's prior written approval of Tenant's designs for the Building and other Improvements.
2. The Philadelphia Art Commission's final approval as required by Applicable Laws.
3. All other licenses, permits, consents, and approvals for the Improvements required by Applicable Laws.

7.2. Environmental Conservation.

7.2.1. By virtue of its location on Benjamin Franklin Parkway, the Improvements will serve as a prominent example of environmentally sensitive design for new building construction in Philadelphia. Therefore, Tenant shall include conservation, sustainability, and environmentally sensitive materials and building systems in the Improvements.

7.2.2. In its design plans and its construction plans and specifications for the Improvements, Tenant shall incorporate elements of what are commonly called "green building designs," to conserve energy to the greatest extent reasonable and use natural resources with optimal efficiency. Tenant shall cause the Improvements to obtain certification under the Leadership in Energy and Environmental Design ("**LEED**") standards of not less than Silver. Without limiting the requirements of the immediately preceding sentence, and regardless of the total square footage of the Building, Tenant shall at a minimum apply and comply with the requirements set forth Mayoral Executive Order 1-07, Section 2.B, and the City of Philadelphia Local Action Plan for Climate Change, dated April 2007, Plan Element: Buildings.

7.3 Manner of Work; Safety of Highway. Upon obtaining all the approvals required under Section 7.1 (the “**Approved Designs**”), Tenant shall promptly start to construct the Improvements and pursue them to completion diligently, in a good and professional manner, in accordance with Applicable Laws, and in strict accordance with the Approved Designs. Tenant shall construct the Improvements so as not to damage the structural integrity of Interstate Highway 696 (the Vine Street Expressway) or interfere with the highway’s safety or standard use.

7.4 Failure to Start Construction. Subject to Section 2.5.2 regarding Tenant’s option to extend the Conditions Period, if Tenant has not satisfied the Conditions Precedent and started construction of the Improvements in accordance with all governmental approvals by the first anniversary of the Commencement Date (the “**Deadline to Start Construction**”), then the City may terminate this Lease by delivering written notice to Tenant. If the City delivers a termination notice to Tenant under this **Section 7.4**, this Lease terminates at 12:01 AM the 60th day after the date the City delivers its termination notice. For purposes of this Section 7.4, to “start construction” means to begin physical site excavation work on the Premises with construction equipment, such as digging, grading, laying foundations, and other site preparation work.

7.4.1. Despite the preceding provisions of this Section 7.4, if before the Deadline to Start Construction the Tenant delivers a written extension notice to the Commissioner, the deadline for Tenant to start constructing the Improvements is postponed six calendar-months (the “**Extended Deadline to Start Construction**”). Tenant’s extension notice must explain the reason for Tenant’s delay in starting construction, the measures Tenant is taking to prepare for construction, and the date Tenant believes it will actually start constructing the Improvements.

7.4.2. If Tenant does not start constructing the Improvements by the Extended Deadline to Start Construction, then this Lease automatically terminates on the Extended Deadline to Start Construction.

7.4.3. If this Lease terminates pursuant to this Section 7.4, then after the Lease Ending Date the City and Tenant have no further obligation under this Lease, or liability to the other under or related to this Lease, except (A) for those liabilities that arise before the Lease Ending Date, and (B) those liabilities and obligations that this Lease expressly states survive the Lease Ending Date.

7.5 No Changes to Approved Designs. Tenant shall not make any material changes to the Approved Designs without on each occasion presenting drawings of the proposed changes at least 30 days in advance of implementing the change to the Commissioner and Art Commission and obtaining the Commissioner’s express written approval and the Art Commission’s approval. For purposes of this Section 7.5, a material change is any change that would alter the exterior appearance of the Building or any other of the Improvements.

7.6 [Reserved.]

7.7 Completion. Promptly following Tenant's completion of the Improvements, Tenant shall provide to the Commissioner completed "as built" drawings of the Building (including all building systems) and all other Improvements constructed or installed by Tenant.

7.8 Alterations Generally. Except as set forth below in this Section 7.8, following Tenant's completion of the Initial Construction, Tenant shall not make any Alterations to the Improvements without obtaining the prior approval of the Commissioner and the Art Commission.

7.8.1. Tenant may make Alterations to the Improvements without obtaining the Commissioner's approval only for modifications that (1) do not change the exterior appearance of the Improvements, and (2) are necessary to comply with this Lease and Applicable Laws. Tenant nevertheless shall obtain Art Commission approval for each Alteration where required by Applicable Laws.

7.8.2. Tenant may make modifications, additions, decorations, or other changes to the interior of any Improvement, including art and wall paint colors and temporary exhibition walls, and similar non-structural changes without the consent or approval of the Commissioner. Tenant may install, replace, and remove nonstructural fixtures and equipment in the Improvements without the consent or approval of Commissioner and without notice to the Commissioner. Tenant shall not make any modification, addition, decoration, or other change to any Improvement that is structural in nature without the prior written approval of the Commissioner.

7.8.3. Without the Commissioner's prior written approval and the Art Commission's approval by resolution, Tenant shall not demolish, in whole or in part, any Improvement constructed on the Premises, except as required to carry out any Alteration approved in accordance with this Lease or in accordance with Section 12.1 and 12.2.

7.9 Ownership of Improvements. All Improvements Tenant constructs or installs on the Premises in accordance with this Lease any time prior to the Lease Ending Date are the property of Tenant. Following the Lease Ending Date, title to the Improvements Tenant has constructed on the Premises in accordance with this Lease automatically vests in the City in accordance with Section 15.1. Tenant shall execute and deliver all documents the City reasonably requests to confirm the City's title to the Improvements after the Lease Ending Date. After the Lease Ending Date, the City may use, lease, demolish, or otherwise dispose of those Improvements without any obligation or liability to Tenant. Tenant's obligations under this Section 7.9 survive the Lease Ending Date.

7.10 No Liens; Performance and Labor and Materialmen's Bonds.

7.10.1. Tenant shall not permit City's interest in the Premises to be subjected to liens of any nature, including mechanics' and materialmen's liens, by reason of any act or omission by or on behalf of Tenant. All persons dealing with Tenant are placed on notice by this provision that those persons may not look to City, or to City's credit or assets (including City's interest in the land constituting the Premises, or the Improvements or furnishings on the Premises) for payment or satisfaction of any obligations incurred by or

on behalf of the Tenant in connection with the Premises. Tenant has no power, right or authority to subject City's interest in the Premises to any mechanic's or materialman's lien or claim of lien.

7.10.2. Without limiting the effectiveness of Section 7.10.1, before starting the Initial Construction, and before each Alteration that is reasonably expected to cost in excess of \$100,000, Tenant shall provide, or cause its contractors to provide, performance bonds and labor and materialmen's bonds for the prompt payment of any amounts due for materials, supplies, labor, services, and equipment in connection with the Initial Construction or Alteration, as the case may be. Tenant shall cause the bonds

A. to be in a form reasonably approved by the City of Philadelphia City Solicitor;

B. given by a surety company approved in advance by the City's Risk Manager in the Risk Manager's reasonable discretion; and

C. to name City as additional obligee.

7.10.3. If any mechanics' or other lien or claim is filed against the City's interest in the Premises or the Improvements (other than for labor or material furnished by or at the request of the City), then Tenant shall, at its sole cost and expense, cause the same to be discharged by payment, bond or otherwise within 30 days after the date on which Tenant receives written notice of the filing of the lien. If Tenant fails to cause the lien to be discharged of record within the 30-day period, then the City may cause the lien to be discharged by payment, bond, or otherwise, without investigation as to the validity of the lien or as to any counterclaim, offsets, or defenses to the lien, and Tenant shall repay as Additional Rent to City on demand for all amounts relating to discharge of the lien.

7.11 Controlling Erosion and Debris During Construction; Protecting Trees.

7.11.1. During Tenant's Initial Construction, and Tenant's performance of all Alterations, Tenant shall

A. take commercially reasonable measures to minimize erosion in, on and about the Premises,

B. take all commercially reasonable measures to minimize the dirt, dust, litter, construction materials, and debris that blow, issue, or flow from the Premises, or from construction vehicles that enter or leave the Premises, onto or into roads, storm water inlets, or any property outside the Premises, and

C. comply with all Applicable Laws, and any condition lawfully imposed by the City in its municipal capacity (as opposed to its capacity as landlord under this Lease) when issuing approvals required by Applicable Laws for the construction.

7.11.2 Tenant shall not cut down or remove any trees on the Premises without the Commissioner's prior written approval. In addition, Tenant's design plans submitted to the Commission for approval pursuant to **Section 7.1** must include identification of all trees that Tenant proposes to cut down in connection with the Initial Construction. Tenant shall not cut down any trees not identified for removal in the Approved Designs.

A. For all trees that will remain after the Initial Construction under the Approved Designs, during the course of the Initial Construction, and during all Alterations reasonably likely to affect the trees, Tenant shall maintain a protective fence or fences at the drip lines of the trees to protect the trees.

B. Tenant shall not permit any construction activity, including movement of vehicles, materials storage, and construction trailer placement, within the protective fencing or that might otherwise damage or injure any protected tree or its roots.

7.11.3. Prior to or commensurate with Tenant's Initial Construction, Tenant shall, at its sole cost and expense, cause the relocation of the Water Main from its current location on the Premises to a new location approved in advance by the Philadelphia Water Department and at Tenant's sole cost and expense and in strict compliance with the Private Cost Agreement.

7.12 Tenant's Sole Obligation to Pay Costs of Initial Construction and Alterations. Without limiting the effect of Section 1.7, Tenant shall construct the Improvements and perform all Alterations at Tenant's sole cost and expense.

ARTICLE 8 MAINTENANCE AND REPAIR

8.1. Maintenance by Tenant Generally. Throughout the Term, Tenant shall Maintain and Repair the Premises and the Improvements to keep them up to at least Institutional Standards, in accordance with the provisions of this Lease, and in accordance with Applicable Laws. Tenant's obligation to Maintain and Repair the Premises and Improvements includes the structural and nonstructural parts of the Improvements and their plumbing, mechanical, and fire suppression systems, roofs, exterior walls, interior walls, windows, foundations, water supply systems, sewage disposal systems, and heating, ventilation, and air conditioning systems, and electrical systems, as well as all exterior portions of the Premises, including landscaping, driveways, sidewalks, curbs, and parking areas.

8.2 Tenant's Sole Obligation to Pay Costs to Maintain and Repair. Without limiting the effect of Section 1.7, Tenant shall perform all Maintenance and Repair of the Premises and Improvements at Tenant's sole cost and expense. The City is not obligated to perform or pay for any Maintenance or Repairs to the Premises. Tenant expressly waives all rights it may have under the provisions of any Applicable Laws to perform Maintenance or make Repairs at City's expense.

8.3 Security. Throughout the Term, Tenant shall take reasonable measures in accordance with Institutional Standards to keep the Premises and the Improvements safe and secure against break in, fire, theft, vandalism, and other hazards.

8.4 Trash Handling. Tenant shall arrange for regular and prompt removal of trash from the Building and the Premises. Tenant shall not permit trash and debris to be piled on any outdoor portion of the Premises.

ARTICLE 9 ENVIRONMENTAL MATTERS

9.1. Environmental Compliance. Throughout the Term, Tenant shall promptly comply with all Environmental Laws affecting the Premises and the Improvements and the use of them, and the handling, storage and disposal of Hazardous Substances on the Premises.

9.1.1. Tenant shall maintain in effect all permits, licenses or other governmental approvals related to Hazardous Substances, if any, required for the Premises or Tenant's use of the Premises.

9.1.2. Tenant shall make all disclosures required of Tenant by any Environmental Laws.

9.1.3. Tenant shall comply with all orders issued by any governmental authority with jurisdiction over the Premises with respect to Tenant's use of the Premises and its employees', agents', contractors' and invitees' use of the Premises. Tenant shall take all actions required by any governmental authority with jurisdiction over the Premises to bring Tenant's activities on the Premises into compliance with all Environmental Laws affecting the Premises. Tenant may, however, assert all reasonable defenses to any of those orders and requirements, subject to the requirements set forth in Section 4.3 [Contesting Impositions].

9.1.4. Tenant shall take all commercially reasonable steps and all steps consistent with Institutional Standards to prevent Contamination in, on, or about the Premises or Improvements, whether potentially resulting from conditions existing before the Commencement Date or from and after the Commencement Date.

9.1.5. If Tenant brings Hazardous Substances onto the Premises in the normal course of its operations, Tenant is not in violation of this Section 9.1 if the Hazardous Substances are those commonly used by museums or in office settings and Tenant handles, uses, contains, stores, and disposes the Hazardous Substances in accordance with applicable Environmental Laws.

9.2. Notices. If at any time Tenant becomes aware, or has reasonable cause to believe, that any Contamination occurred in, on, about, or beneath the Premises or the Improvements, Tenant shall promptly give written notice to the City of the Contamination and

9.2.1. any enforcement, cleanup, removal, remediation, or other governmental or regulatory action instituted, completed, or threatened pursuant to any Environmental Laws;

9.2.2. any claim made or threatened by any person against City, Tenant, or the Premises arising out of or resulting from any Contamination; and

9.2.3. any reports made to any local, state, or federal environmental agency arising out of or related to any Contamination.

9.3 Indemnity for Environmental Matters.

9.3.1. Tenant shall promptly indemnify, defend and hold harmless the City from and against any and all losses, claims, suits, actions, damages, expenses (including but not limited to attorneys' and experts' fees and litigation costs), and liabilities, arising from, related to, or in connection with, the death of or injury to any person or damage to any property, or any fine or penalty imposed by any governmental authority having jurisdiction under any Applicable Law, arising from or caused in whole or in part, directly or indirectly, by (1) the presence in, on or under the Premises or any of the Improvements of any Hazardous Substance that was first introduced to the Premises during the Term of this Lease, (2) any discharge or release of any Hazardous Substance in or from the Premises or any Improvements during the Term, (3) Tenant's failure to comply with its covenants under **Section 9.1**, or (4) any Hazardous Substance, or material containing Hazardous Substance, that was part of the Improvements existing on the Effective Date. This **Section 9.3.1** does not apply to, and Tenant is not obligated to indemnify or defend the City with respect to any Contamination existing in, on or under the Premises prior to the Commencement Date, except to the extent Tenant or any Contractor spreads or exacerbates the Contamination. In defending the City pursuant to this Section 9.3.1, Tenant shall use counsel of an insurance carrier obligated to resist or defend the claim or other counsel reasonably acceptable to the City.

9.3.2. Costs Included: Survival. Tenant's indemnity obligations under this **Section 9.3** include, whether foreseeable or unforeseeable, all costs related to any site investigation, and all costs for repair, cleanup, detoxification or decontamination, or other remedial action of or relating to the Premises or any of the Improvements for which Tenant is obligated to indemnify, defend, and hold harmless the City under Section 9.3.1.

9.3.3. Discovery of Contamination; Tenant's Sole Remedy. If at any time during initial construction of the Building and other Improvements Tenant learns that the Premises have pre-existing Contamination, Tenant, at its sole cost and expense, shall within 120 days following discovery of the Contamination obtain investigations and reports from firms specializing in testing and analysis of Hazardous Substances about the nature and extent of the Contamination and provide copies of the investigations and reports to the Commissioner. After obtaining the investigations and reports and providing a complete copy of each to the Commissioner, Tenant's sole remedy is to do either of the following:

1. Continue this Lease and at Tenant's sole cost and expense, to the extent necessary to render the Premises usable and safe for the Permitted Uses, take all necessary and reasonably prudent measures to remediate the Contamination in accordance with Applicable Laws, including the regulations and orders of all Commonwealth and federal agencies with jurisdiction over the matter. Tenant is not obligated to remediate the Contamination to the extent complete remediation exceeds what is legally required to render the Premises usable and safe for the Permitted Uses. The City is not obligated to Tenant to remediate the Contamination in any way. If Tenant does not provide notice to the Commissioner by the first anniversary of the day Tenant discovered the Contamination whether Tenant elects to continue this Lease, then Tenant is deemed to have elected to continue this Lease under this Section 9.3.3.1.

2. Terminate this Lease upon 180 days prior written notice to the Commissioner and, following the Commissioner's receipt of Tenant's notice, Tenant shall before the Lease Ending Date, at Tenant's sole cost and expense, remove all partially built Improvements and restore the Premises to open park space with landscaping reasonably satisfactory to the Commissioner, and return possession of the Premises to the City.

9.4 Indemnity Obligations Survive. Without limiting the effect of **Section 24.13** below, Tenant's obligations under the provisions of this **Article 9** survive the Lease Ending Date.

ARTICLE 10

SECURITY AND SAFETY; INDEMNIFICATION; RELEASE; INSURANCE

10.0 Security and Safety. Subject only to the City's title to the Premises, starting on the Commencement Date and continuing through the Lease Ending Date, Tenant has the exclusive right to possess the Premises (subject to the provisions of this Lease), and Tenant has exclusive care, custody and control of the Premises.

10.0.1. Tenant shall ensure the safety and security of the Premises and of all persons under Tenant's control on the Premises, including Barnes officers, staff, and contractors, and Museum patrons, guests, invitees, and licensees. Tenant shall keep all exterior portions of the Premise safe for usual and ordinary uses by the general public of park land with outdoor sculptures.

10.0.2. Tenant shall arrange for 24-hours-a-day security for the Premises. Tenant's security obligations do not necessarily require the presence of a security guard or other personnel on the Premises 24-hours-a-day. Tenant may satisfy its obligation to arrange for 24-hours-a-day security for the Premises by the combined use of locks, security cameras, emergency contact phone numbers, and additional measures.

10.1 Indemnification.

10.1.0. In this **Article 10**, the following terms have the meanings assigned to them below:

“**Indemnified Parties**” means the City and (1) its officials, officers, and employees, and representatives, (2) its agents, and (3) its successors and assigns in title to the Premises or in the City’s estate in the Premises.

“**Claim**” and “**Claims**” include all claims, liabilities, actions, causes of action, suits, litigation, proceedings, demands, controversies, judgments, losses, damages, penalties, fines, fees, costs, interest and expenses, liens, and claims of lien (including reasonable fees, costs and expenses of the Indemnified Parties’ attorneys, investigators and experts).

10.1.1. Subject to the provisions of **Section 9.3.1**, Tenant shall promptly indemnify, defend, and hold harmless the Indemnified Parties from and against any and all losses, claims, suits, actions, damages, expenses (including but not limited to attorneys’ and experts’ fees and litigation costs), and liabilities, including those in connection with loss of life, bodily and personal injury, or damage to property (real or personal, and regardless of ownership), that occur or arise, in whole or in part, directly or indirectly, as a result of or in connection with

(1) any act or omission of Tenant, the Barnes, or of any of their respective trustees, directors, officers, members, agents, employees, contractors, subtenants, patrons, guests, invitees, or licensees, occurring in, on or about, or related to, the Premises or the Improvements;

(2) the possession, use, occupancy, operation, maintenance, repair, and replacement of all or any portion of the Premises or Improvements by Tenant, the Barnes, or by any of their respective trustees, directors, officers, members, agents, employees, contractors, subtenants, patrons, guests, invitees or licensees;

(3) the exercise of any right or performance of any obligation by Tenant, the Barnes, or any of their respective trustees, directors, officers, members, agents, employees, contractors, subtenants, patrons, guests, invitees, or licensees, under, pursuant to, or related to, this Lease or the Collaboration Agreement, including breach of or by any of them.

(4) the condition of all or any portion of the Premises or Improvements,

except in each case of (1) through (4) where caused primarily by the gross negligence or willful misconduct of the Indemnified Parties, or by any of their respective trustees, directors, officers, members, agents, employees, or contractors, occurring after the Commencement Date.

10.1.2. If any Claim is brought or asserted against the Indemnified Parties or any of them relating to any matter for which it has been indemnified by Tenant, then, upon written notice from the Indemnified Party to Tenant, Tenant, at its sole cost and expense, shall promptly resist or defend the Claim by counsel approved by the Indemnified Party in writing. Tenant is not obligated to obtain the Indemnified Party's approval in each instance where the Claim is resisted or defended by counsel of an insurance carrier obligated to resist or defend the claim. Nevertheless, each of the Indemnified Parties may, if it desires, engage at its expense its own counsel to participate in the defense of any Claim. Tenant shall promptly pay, perform and discharge any judgment, order, or decree entered against the Indemnified Parties, or against any of them. Tenant shall promptly pay, perform and discharge any settlement made by Tenant on behalf of the Indemnified Parties, or any of them, on account of the Claim.

10.1.3. Without limiting the general effect of Section 24.13, Tenant's obligations under this Section 10.1.3 survive the Lease Ending Date.

10.2 Release. In consideration for the rights granted to Tenant by the City under this Lease, Tenant, for itself and its successors and assigns, and any person claiming by, through, or under Tenant or any of them (including the Barnes), does by executing this Lease remise, quitclaim, release and forever discharge the City from any and all, and all manner of, actions and causes of action, suits, claims, liabilities, and demands in law or in equity that Tenant or any of them may have against the City (other than claims and liabilities arising pursuant to the City's breach of this Lease) relating in any way, directly or indirectly, to (1) the Premises, the Improvements, and all conditions now or in the future existing in, on, about, or beneath the Premises or the Improvements, except where the conditions result exclusively and entirely from the gross negligence or willful misconduct of the City after the Commencement Date, and (2) the possession, use, occupancy, operation, and maintenance, and repair of all or any part of the Premises or of the Improvements. Without limiting the general effect of Section 24.13, the provisions of this Section 10.2 survive the Lease Ending Date.

10.3 Assumption of Risk. Tenant voluntarily and knowingly assumes all risk of loss, damage and injury, including death, which may be sustained by Tenant or any of the Releasers, and the public in general, in connection with the Premises, the Improvements, and Tenant's use, occupancy, operation, Maintenance and Repair of the Premises.

10.4 City's Sovereign Immunity. Nothing in this Article 10 or any other provision of this Lease waives or modifies the rights, immunities, defenses, and limitations available to the City under the "Pennsylvania Political Subdivision Tort Claims Act," Act No. 142, October 5, 1980, P.L. 693, 42 Pa.C.S.A. § 8501 et seq. (as it may be amended from time to time). In addition, nothing in this Article 10 or any other provision of this Lease waives or modifies any other rights, immunities, defenses, limitations and other benefits available to the City under other Applicable Laws.

ARTICLE 11
INSURANCE

11.1 Insurance Generally. Throughout the Term, Tenant shall obtain and maintain, or shall cause the Barnes to obtain and maintain, and shall cause each Contractor to obtain and maintain, in full force and effect, the types and at least the minimum limits of commercial general liability insurance, umbrella liability insurance, and property insurance for the Premises and Improvements customarily carried in accordance with Institutional Standards.

11.1.1. Tenant shall cause the Indemnified Parties to be named as endorsed additional insureds on the commercial general liability insurance maintained by Tenant pursuant to this Lease.

11.1.2. Tenant shall cause the commercial general liability insurance policy to include an endorsement stating that the coverage afforded the Indemnified Parties is primary to any other coverage available to them and that no act or omission by any of the Indemnified Parties invalidates its coverage.

11.1.3. Each policy of liability insurance, except professional liability insurance, must be written on an “occurrence” basis and not a “claims made” basis.

11.1.4. If Tenant ever intends to serve or permit alcoholic beverages in the Building or any of the other Improvements or on the Premises, then before Tenant may do so Tenant shall obtain and maintain [liquor liability insurance in not less than \$_____].

11.2 Insurer Must Be Authorized to do Business in Pennsylvania. Unless waived in writing by the Risk Manager, Tenant shall obtain each of its insurance policies, and cause its contractors to obtain each of their insurance policies, from one or more insurance companies duly authorized to conduct business in the Commonwealth of Pennsylvania with an A. M. Best Company, Inc. general policyholders rating of at least “A”. (If A.M. Best changes its name, merges with another company, or ceases to exist, or if it changes its grading standard designations, then to satisfy Section 11.1’s insurance requirements, Tenant’s insurer must have a comparable rating from a comparable firm that provides insurance company ratings.)

11.3 Waiver of Subrogation. Without in any way limiting the effect of any other provision of this Lease, Tenant releases the City from any and all liability or responsibility to Tenant or anyone claiming through or under Tenant by way of subrogation or otherwise for any loss or damage to the Premises or the Improvements covered by any insurance then in force, or required under this Lease to be covered by insurance, even if such loss or damage was caused by the fault or negligence of any of the City, or anyone for whom any such party may be responsible, to the full extent of such coverage or required coverage (such release including, without limitation, any liability for any deductible amount under any policy providing such coverage). Tenant shall cause each policy of property insurance required under this Lease to include a provision for a waiver of subrogation in favor of the City.

11.4 City Has No Obligation to Insure. The City has no obligation to insure the

Premises or any Improvements, or any personal property located in or on the Premises.

11.5 Copies to City. On or before the Commencement Date, and thereafter as often as is required to provide evidence that Tenant is maintaining the insurance that this Lease requires Tenant to maintain (but not less than once during each calendar year), Tenant shall deliver to the Risk Manager certificates of insurance setting forth the policies of insurance Tenant carries in connection with the Premises and the Improvements. Tenant shall deliver to the Risk Manager copies of Tenant's commercial general liability, umbrella liability, and property insurance policies Tenant maintains with respect to the Premises and the Improvements as follows:

A. Not later than 21 days after receipt of the City's written request for the copies,
or

B. If Tenant is in the process of changing its insurance carrier or has changed its insurance carrier within the six months preceding receipt of the City's request, then not later than 45 days after receipt of the City's written request.

In case of either A or B immediately above, Tenant is not obligated to provide copies of the required insurance policies more frequently than once per calendar year.

11.6 Adjustment of Loss. Tenant in its sole discretion may adjust or settle any loss under any policy of insurance this Lease requires Tenant obtain and maintain; except if the adjustment or settlement could reasonably be expected to impose or lead to judgment or liability against the City, Tenant shall not adjust or settle the loss without the Risk Manager's prior written approval.

11.7 Insurance Amounts Do Not Limit Tenant's Obligations. The insurance requirements set forth in this **Article 11** (A) do not modify, limit or reduce Tenant's indemnification obligations under this Lease, and (B) do not limit Tenant's liability under this Lease

1. to the proceeds paid pursuant to the policies of the required insurance,
2. to the premiums due upon the required insurance policies, or
3. to the limits of the policies of the required insurance.

11.8 Self Insurance. Tenant may self-insure the coverages required under Section 11.1, except liquor liability insurance.

11.8.1. If Tenant desires to or does self-insure any of the coverages required under Section 11.1, then promptly following the Risk Manager's request, Tenant shall submit to the Risk Manager evidence of Tenant's qualifications to act as a self-insurer reasonably satisfactory to the Risk Manager, including certification required by the Commonwealth under Applicable Laws. (Tenant is not obligated to provide the required evidence more than once each calendar year.)

11.8.2. If Tenant self-insures any of the insurance required by Section 11.1, Tenant shall provide the City not less than the coverage, rights, and benefits under Tenant’s self-insurance program (including coverage for the City as additional insured and the rights and benefits under **Section 11.3**) that the City would have received had Tenant satisfied the requirements of **Sections 11.1—11.3**.

11.8.3. For purposes of this Article 11, Tenant shall deliver certificates of insurance and other required documents to the Risk Manager at the following address, and to the City as required in Article 19:

City of Philadelphia
Division of Risk Management
One Benjamin Franklin Parkway – 14th Floor
1515 Arch Street
Philadelphia, PA 19102

or another address as the City may designate for the Risk Manager by notice to Tenant.

11.9 Insurance with Barnes. Tenant may, in its discretion, combine its insurance with the Barnes’ insurance so that there is one policy that satisfies and covers both Tenant’s insurance obligations under this Lease and the Barnes’ insurance obligations under its sublease with the Philadelphia Authority for Industrial Development dated January 2, 2008. Any combined insurance policy or policies must clearly name Tenant as insured.

11.10 No City Obligation to Insure. Without limiting the effect of Section 1.7, the City is not obligated to insure, and has no liability for, any injury or damage to the Premises or Improvements, or the equipment or other personal property in or on the Premises or Improvements.

11.11 Risk Manager’s Address. For purposes of this Article 11, Tenant shall send all required notices, certificates, and other documents to the Risk Manager in the manner and at the address provides in Section 19.1 [Giving Notice].

ARTICLE 12

DAMAGE OR DESTRUCTION

12.1. Damage. If, during the Term, there occurs any damage to or destruction of all or any part of the Premises or the Improvements due to any cause (a “**Casualty**”), Tenant, at its sole cost and expense, shall promptly notify the City and take action as is reasonably necessary to assure that neither the Premises nor the Improvements constitute a nuisance or otherwise present a health or safety hazard. Tenant shall perform the work at Tenant’s sole cost and expense.

12.2. Termination of Lease for Damage; Continuance of Lease and Reconstruction.

12.2.1. If the Improvements suffer a Casualty so that Tenant reasonably determines it would be unfeasible to restore the damaged Improvements, then Tenant may elect in its sole discretion to terminate this Lease by giving written notice to City (the “**Termination Notice**”). Tenant must give its Termination Notice on or before one year after the Casualty. If Tenant sends a Termination Notice, then the Lease Ending Date is 5:00 PM 360 days after the City receives the Termination Notice, or an earlier date that Tenant specifies in the Termination Notice. Before the Lease Ending Date, Tenant shall raze the Improvements, clear them and all debris and rubble from the Premises, restore the Premises to open park space with landscaping reasonably satisfactory to the Commissioner, and return possession of the Premises to the City.

12.2.2. If Tenant does not deliver a Termination Notice to the City on or before one year following a Casualty, then Tenant shall promptly either (A) Repair and restore the Improvements, or (B) raze the Improvements and construct replacement(s) of them, subject to the provisions of Article 7 regarding Alterations.

12.2.3. Despite the other provisions of Section 12.2 to the contrary, if Tenant exercises its rights set forth in Section 12.2.2(A) or (B), and for a period of one year after the Casualty Tenant does not start physical Repair and restoration or physical construction of replacement improvements on the Premises, the City may terminate this Lease by giving written notice of the termination to Tenant at any time before Tenant starts physical construction of new improvements.

12.2.4. Tenant’s Repair and reconstruction of the Improvements, and its construction of new replacement Improvements, is subject to the requirements of Section 7.9 regarding Alterations.

12.3 Insurance Proceeds. All insurance proceeds payable as a result of any Casualty are payable to Tenant and the sole property of Tenant. Tenant’s obligations under this **Article 12**, however, are not contingent upon the availability of any insurance proceeds and survive the Lease Ending Date.

ARTICLE 13 EMINENT DOMAIN

13.1 Definitions. In this Lease, the words and phrases listed below have the meanings assigned to them below:

“**Condemnor**” means the entity that takes real property by virtue of the power of eminent domain or by purchase or voluntary conveyance under threat of condemnation; but “Condemnor” excludes the City and any City instrumentality and any City-related agency.

“**Partial Taking**” means a permanent taking by the Condemnor under the power of eminent domain or by purchase or voluntary conveyance under threat of condemnation

of less than substantially all of the Premises or Improvements, any appurtenances of the Premises.

“Taking” means a taking by the Condemnor under the power of eminent domain of real property or its appurtenances under the power of eminent domain or by purchase or voluntary conveyance under threat of condemnation.

“Total Taking” means a permanent taking by the Condemnor under the power of eminent domain or by purchase or voluntary conveyance under threat of condemnation of substantially all the Premises or the Improvements, or both of them.

13.2 Total Taking.

13.2.1. If a Total Taking occurs, this Lease terminates in its entirety on the earlier of (A) the date upon which title to the Premises, the Improvements, or any taken portion of either is vested in the condemning authority, or (B) the date upon which possession of the Premises, the Improvements, or any portion of either, is Taken by the condemning authority. Tenant shall pay all Rent and other sums then payable by Tenant, apportioned through and including the date of termination.

13.2.2. If a Total Taking occurs, the City is entitled to claim compensation from the condemning authority for the value of its interests in the Premises and the Improvements and any other items to which the City is entitled under Applicable Laws. In addition, if a Total Taking occurs, Tenant is entitled to separately claim compensation from the condemning authority for the value of its leasehold interest in the Premises, the value of the Improvements (considering, among other things, that title to the Improvements will vest in the City on the Lease Ending Date as provided in Section 7.4), relocation expenses, and any other items to which Tenant is entitled to compensation under Applicable Laws.

13.3 Partial Taking.

13.3.1. If a Partial Taking occurs and the remaining portion of the Premises can, in Tenant’s reasonable opinion, be adapted and economically and feasibly operated for the Primary Use under this Lease, Tenant shall proceed with diligence to perform all necessary and desirable Repairs and to restore the remaining Premises and Improvements to an economically viable unit in accordance with all Applicable Laws, subject to Section 7.8 regarding Alterations, and as nearly as possible to the condition the Premises was in immediately prior to the Partial Taking.

13.3.2. If a Partial Taking occurs and the remaining portion of the Premises cannot, in Tenant’s reasonable opinion, be adapted and economically and feasibly operated for the Primary Use under this Lease, then within 360 days following the Partial Taking Tenant shall raze the remaining Improvements, clear them and all debris and rubble from the Premises, restore the Premises to open park space with landscaping reasonably satisfactory to the Commissioner, and return possession of the Premises to the

City. This Lease terminates when Tenant returns possession of the restored Premises to the City.

13.3.3. If a Partial Taking occurs, the City may claim compensation from the condemning authority for the value of its interests in the Premises and the Improvements Taken and any other items to which the City is entitled under Applicable Laws. In addition, if a Partial Taking occurs, Tenant is entitled to separately claim compensation from the condemning authority for the value of its leasehold interest in the Premises Taken, the value of the Improvements Taken (considering, among other things, that title to the Improvements will vest in the City on the Lease Ending Date as provided in Section 7.9), relocation expenses, and any other items to which Tenant is entitled under Applicable Laws.

13.4 Temporary Taking. If the temporary use of the whole or any part of the Premises or of the Improvements is Taken as contemplated in **Section 13.2** or **13.3**, this Lease remains in force. All awards, damages, compensation and proceeds payable by the Condemnor by reason of a temporary Taking for periods prior to the Lease Ending Date are payable to Tenant. All the awards, damages, compensation and proceeds for periods of the temporary Taking after the Lease Ending Date are payable to the City.

13.5 Proceedings. In any condemnation proceeding affecting the Premises or the Improvements that may affect the City's or Tenant's estate in the Premises and the Improvements, or either of them, the City and Tenant each may appear in and defend against the action as they deem proper in accordance with their own interests. To the extent possible, the City and Tenant shall cooperate to maximize the condemnation proceeds payable by reason of the condemnation. The City and Tenant shall join any issues required to be resolved pursuant to this Article in the condemnation proceedings to the extent permissible under then Applicable Laws for the purpose of avoiding multiplicity of actions and minimizing the expenses of the parties. All condemnation proceeds are to be distributed first to the City to the extent the proceeds are attributable to the City's estate in the Premises and Improvements, and second to the Tenant to the extent they are attributable to Tenant's estate in the Premises or Improvements or to Tenant's personal property and Tenant's costs to construct the Improvements.

13.6 Tenant's Obligations Survive. Tenant's obligations under this Article 13 survive the Lease Ending Date.

ARTICLE 14

DEFAULT

14.1. Events of Default. It is a breach of this Lease by Tenant if any of the following events occur (individually an "**Event of Default**" and collectively "**Events of Default**"):

14.1.0. (A) The Collaboration Agreement expires or is terminated without a new, replacement agreement or other plan reasonably acceptable to the City taking effect reasonably promptly upon the expiration or termination, or (B) regardless of the status of a new or replacement agreement, Tenant and the Barnes do not Maintain and Repair the

Premises and Improvements for a period of three months anytime following the Collaboration Agreement's expiration or termination.

14.1.1. A material portion of the Premises is used for a purpose other than a Primary Use, or the Premises are not used by Tenant for the Primary Use as required by this Lease, and the misuse continues for a period of six months after the date on which the City delivers notice to the Tenant of the misuse; except that it is not an Event of Default if Tenant ceases to use the Premises for the Primary Use in a manner governed by **Section 7.8** or **Article 12** or as otherwise expressly permitted by this Lease.

14.1.2. Tenant fails to maintain the policies of insurance or waivers of subrogation required by **Article 11** and the failure continues for a period of 30 days after the date on which the City delivers to Tenant a written notice of Tenant's failure.

14.1.3. Tenant fails to timely pay any amount due to City under this Lease, or fails to timely pay any charge, Imposition, or other payment obligation under this Lease, and the failure continues for a period of 15 days after the date on which the City delivers to Tenant a written notice of Tenant's failure.

14.1.4. Tenant fails to fully perform, observe, or satisfy any term, covenant, condition, limitation, prohibition, or other provision of this Lease to be performed, observed, or satisfied by Tenant, except those set forth in **Sections 14.1.0** through **14.1.3**, and the failure continues for a period of 60 days or longer after the date on which the City delivers to Tenant a written notice of Tenant's failure. If Tenant's failure, however, is of such a nature as to be subject to cure but cannot reasonably be cured within the 60-day period, then Tenant may have an additional reasonable period of time to effect a cure so long as Tenant has promptly commenced efforts to cure its failure and uses best efforts to diligently prosecute the cure to completion and Tenant continues to Maintain and Repair the Premises and Improvements throughout the cure period.

14.1.5. Any right or interest of Tenant under this Lease pertaining to the Building, other Improvements, or the Premises (but not any artwork) is subject to attachment, execution, or other levy, or to seizure under legal process if due to wrongful act or omission by Tenant, if not released or appropriately bonded within 90 days after the attachment, execution, levy, or seizure becomes ordered, certified, perfected, decreed, or recorded, as the case may be for the nature of the attachment, execution, levy, or seizure.

14.1.6. The appointment of a receiver to take possession of the Premises or the Improvements, or both of them, or of Tenant's estate or of Tenant's operations, for any reason if not discharged within 90 days of the appointment, including an assignment for the benefit of creditors or voluntary or involuntary bankruptcy proceedings; except there is no cure period where the receivership is instituted by City, the Event of Default in that case being not the appointment of a receiver at City's instance but the event justifying the receivership, if any.

14.1.7. Tenant makes an assignment for the benefit of creditors or files a voluntary bankruptcy petition, or has an involuntary bankruptcy petition filed against it, under any law; or for extending time for payment, adjustment, or satisfaction of Tenant's liabilities to creditors generally; or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed or terminated within 90 days after the assignment, filing, or other initial event.

14.1.8. Tenant commits an Event of Default under any other agreement between Tenant and the City, or as subtenant under a sublease from a City tenant.

14.2. City's Remedies. If any Event of Default has occurred, the City may exercise the following remedies in addition to all other rights and remedies available to the City at law or in equity. The City's remedies under this Lease are not exclusive of each other. The City in its sole discretion may exercise its remedies individually, serially, cumulatively, in any combination, or in the alternative.

14.2.1. Damages. The City may recover from Tenant all damages (excluding consequential and punitive damages) suffered by the City and all reasonable costs and expenses (including attorneys' fees and litigation costs) incurred by the City as a result of or in connection with Tenant's Event of Default, plus interest on the damages at the Default Rate from the date incurred until the date paid by Tenant.

14.2.2. Equitable Relief. The City may seek an order for declaratory judgment, specific performance, injunction, temporary restraining order, or other equitable relief.

14.2.3. Termination.

A. The City may, at its election, terminate this Lease by giving Tenant a written termination notice. On the 30th day following Tenant's receipt of the City's termination notice, all of Tenant's rights in the Premises terminate. Upon receiving the City's termination notice,

1. Tenant shall promptly vacate and surrender the Premises in accordance with **Section 15.1.1**, and

2. the City may reenter and take possession of the Premises and eject all parties in possession or eject some and not others or eject none.

The City's termination of this Lease does not relieve Tenant from the payment of any sums then due to the City under this Lease plus interest on those sums at the Default Rate, or from any claim for damages previously accrued or then accruing against Tenant up to the date of termination.

B. Despite the preceding provisions of this **Section 14.2.3**, if Tenant institutes legal proceedings to dispute the existence of an Event of Default for which the City issued a termination notice, then:

1. the effectiveness of any the termination is stayed during the duration of the proceedings until a final, unappealable order is issued upholding the termination; and

2. the termination will be automatically deemed withdrawn by the City and of no further force or effect if, within thirty 30 Business Days after the final, unappealable order upholding the existence of an Event of Default, Tenant fully cures the Event of Default which gave rise to the termination and pays all the City's costs and expenses related to the litigation (including fees of the City's attorneys, whether City employees or outside counsel, and fees of experts and consultants).

C. Despite the preceding provisions of this **Section 14.2.3**, if an Event of Default occurs under Sections 14.1.3 or 14.1.5, the City may not terminate this Lease unless Tenant fails to cure the Event of Default for one calendar year from the date the City delivers its default notice to Tenant; except that if for any three-month period during that time Tenant fails to Maintain and Repair any part of the Premises or Improvements the City may immediately exercise all its rights under the preceding provisions of this **Section 14.2.3**.

14.2.4. Suspension. The City may suspend this Lease for up to one year by giving Tenant written notice of the suspension. Upon Tenant's receipt of the City's suspension notice, all of Tenant's rights in the Premises are immediately suspended.

A. Tenant shall promptly surrender and vacate the Premises in accordance with **Section 15.1**.

B. City may reenter and take possession of the Premises and eject all parties in possession or eject some and not others or eject none.

C. Tenant is not relieved from (A) its obligation to pay to City any Rent or other sums previously accrued, accruing, or due under this Lease, plus interest at the Default Rate starting from the later to occur of (1) the Event of Default, or (2) the date due, up to the date of payment, or from (B) any claim for damages previously accrued or then accruing against Tenant, plus interest at the Default Rate up to the date of payment.

4. During the period of the suspension, Tenant may work to cure the Event of Default; but Tenant must execute a written license agreement with the City before performing any Alteration or other work on the Premises or Improvements.

5. At the end of the suspension period, and any time during the suspension period, City may, in its sole discretion, reinstate this Lease and Tenant's rights under this Lease, or terminate this Lease in accordance with Section 14.2.3.

14.2.5. Tenant's Personal Property Located in the Premises. In the case of City's reentry and until the reentry expires or otherwise ends, City may use Tenant's personal property and trade fixtures located on and used in connection with the management and operation of the Premises, or any of Tenant's property and fixtures (but expressly excluding any artwork), without compensation and without liability for use or damage, or store them for the account and at the cost of Tenant. The election of one remedy for any one item does not foreclose an election of any other remedy for another item or for the same item at a later time.

14.3 Default Notice. Any notice of default the City sends to Tenant must have reasonable specificity to enable Tenant to reasonably cure the default.

14.4 Waiver of Breach. No waiver by City of Tenant's breach of any provision of this Lease or any Event of Default waives any other breach by Tenant or other Event of Default, whether of the same or any other covenant or condition.

14.4.1. The City's voluntary waiver or giving of any benefit, privilege, or service, does not give Tenant any contractual right by custom, estoppel, or otherwise to additional or continuing waivers, benefits, privileges, or services.

14.4.2. The City's failure to respond to any request by Tenant for a waiver, extension, benefit, privilege, or service from or by City, is not the City's agreement to Tenant's request but rather is deemed the City's denial of Tenant's request, and Tenant shall continue to comply with the provision of this Lease as if City expressly declined Tenant's request.

ARTICLE 15

SURRENDER OF PREMISES ON LEASE ENDING DATE; DISSOLUTION OF TENANT

15.1. Surrender Upon Expiration or Termination; Vesting of Title to Improvements; Razing Improvements.

15.1.1. Unless otherwise expressly provided in this Lease,

A. on the Lease Ending Date, Tenant shall, at its sole cost and expense, promptly quit and surrender possession of the Premises and the Improvements to the City without delay and (except as provided in Section 15.1.1.B) in the condition required to be maintained under this Lease, normal wear and tear and damage by Casualty excepted;

B. if 120 days before the Lease Ending Date the City directs Tenant in writing to do so, Tenant shall raze the Improvements, clear the Premises of debris and rubble, restore the Premises to open park space with landscaping reasonably satisfactory to the Commissioner, and return to the City possession of the Premises on or before the Lease Ending Date;

C. if the City does not direct Tenant to raze the Improvements and restore the Premises at least 120 days before the Lease Ending Date as provided in 15.1.1.B, then on the Lease Ending Date title to the Improvements automatically vests in the City without the need for any party to execute any instrument or other document, but Tenant shall execute appropriate documentation as may be reasonably requested by the City to confirm the transfer of title to the Improvements to the City, and Tenant's obligation to do so survives the Lease Ending Date;

D. Tenant's surrender of the Premises and Improvements before expiration of the Term does not merge the City's Estate and Tenant's Estate, unless the City expressly elects in writing to terminate the Lease and merge the two estates.

15.1.2. Survival. Tenant's obligations under this Section 15.1 survive the Lease Ending Date.

15.2 Tenant's Personal Property.

15.2.1. Subject to **Section 5.2**, Tenant may, without notice to or consent of the City, remove any or all personal property from the Premises and the Improvements at all times during the Term and on the Lease Ending Date.

15.2.2. Any personal property (other than artwork) that remains in or on the Premises and Improvements after the Lease Ending Date is deemed to have been abandoned and the City may either retain it as the City's property or dispose of it in any manner the City's sees fit. Tenant shall pay to the City as Additional Rent all the City's costs and expenses for removing and disposing of the personal property (including any artwork left on the Premises after the Lease Ending Date and stored by the City or returned by the City to Tenant), together with interest at the Default Rate from the date the costs and expenses are incurred. Tenant shall pay those costs and expenses to the City within ten days after receipt of the City's written statement of the amount due, and Tenant's obligation to do so survives the Lease Ending Date. If the City sells any of the personal property, the City may receive and retain all the proceeds of the sales as the City's property.

15.3 The Artwork. Despite anything to the contrary in this Lease (except as provided in **Section 15.2** and except for any works of art loaned by the City to Tenant), the City has no right, title or interest in or to, and is not entitled to sell, any artwork which Tenant leaves on the Premises 60 days after the Lease Ending Date. After that 60-day period, the City in its sole

discretion may move and relocate any artwork within the Premises or to a location off the Premises. The City is not responsible for the security of any remaining artwork after the Lease Ending Date, and the City is not liable for any damage to any artwork after the Lease Ending Date.

15.3.1. Not later than ten Business Days after the Lease Ending Date, (A) Tenant shall deliver to the Commissioner a list of all third-party owners of artwork that is on the Premises on the Lease Ending Date (each, a “**Third-Party Owner**”) together with each’s complete, accurate contact information, and (B) Tenant shall deliver notice of the City’s rights under this Section 15.3 to each Third-Party Owner and provide evidence to the City that it has done so.

15.3.2. If Tenant has timely provided the notices that Section 15.3.1 requires, then at least 30 days before the City intends to move or relocate any artwork on the Premises, the City shall notify each Third-Party Owner of the City’s intent to move, relocate, or otherwise handle the artwork. In providing notice under this Section 15.3.2, the City may rely solely on the list of Third-Party Owners and their contact information Tenant provided under Section 15.3.1.

15.3.3. If before the City moves, relocates, or handles any artwork on the Premises under this Section 15.3 a Third-Party Owner notifies the Commissioner in writing that it wants to remove its artwork, then the City shall give that third-party owner not less than 30 days to come onto the Premises and remove its artwork; but it is a condition precedent to the City’s obligation to permit the Third-Party Owner to do so that the Third-Party Owner must have first signed a permit or agreement reasonably acceptable to the City under which the Third-Party Owner indemnifies the City, obtains insurance, and provides a certificate of insurance to the City, and agrees to other reasonable and customary conditions and requirements the City may impose.

15.4 Dissolution of Tenant. If Tenant discontinues its existence as a non-profit entity, or if Tenant’s non-profit status is revoked or terminated by a federal or Commonwealth taxing authority, Tenant shall reinstate its existence as a non-profit entity not later than 120 days after the discontinuance, revocation, or termination, as the case may be. If Tenant fails to reinstate its non-profit status within the 120-day period, then this Lease terminates at the end of the 120-day period and Tenant shall promptly surrender the Premises in accordance with Section 15.1 and subject to the other provisions of this Article 15. Prior to its discontinuance, Tenant shall make arrangements to execute all appropriate documents as may be reasonably requested by City to confirm the transfer of title to the Improvements and personal property on the Premises to the City. If Tenant receives a notification from a federal or Commonwealth taxing authority that the authority may revoke or terminate Tenant’s non-profit status, Tenant shall promptly provide a copy of the notice to the Commissioner.

15.5 Tenant’s Obligations Continue. Tenant’s obligations under this Article 15 survive the Lease Ending Date.

ARTICLE 16
ASSIGNMENTS, SUB-LEASES, MORTGAGES AND OTHER TRANSFERS

16.1. Tenant Shall Not Sub-Lease, Mortgage, Assign or Transfer. Except for a Permitted Transfer (defined below), because of the public purpose of the City in leasing the Premises to Tenant to conduct the Primary Use, Tenant shall not (1) assign, transfer, mortgage, pledge, hypothecate or encumber the Premises, Improvements, or this Lease, or (2) sublet, license, or otherwise permit the use or occupancy of all or any part of the Premises or the Improvements (each prohibited action in (1) and (2), a **“Prohibited Transfer”**).

16.2 Transfers By Legal Process or Operation of Law. The prohibition against Prohibited Transfers under this Lease include (1) any liquidation or dissolution of Tenant, or (2) any transfer of Tenant’s interest in this Lease by levy or sale on execution, or other legal process, (3) Tenant’s merger by contract or operation of law, (4) transfer of a direct or indirect controlling interest in Tenant or of rights or options which one or more third parties could assert or exercise to obtain a direct or indirect controlling interest in Tenant, and (5) any transfer of Tenant or Control of Tenant in bankruptcy or insolvency, or under any other compulsory procedure or order of court.

16.3 Prohibited Transfer a Default. Any Prohibited Transfer made or given by Tenant or otherwise in violation of **Section 16.1** or **Section 16.2** of this Lease is void and is an Event of Default.

16.4 Permitted Contractors. Despite the foregoing provisions of this **Article 16**, Tenant may enter into one or more contracts, including the Collaboration Agreement, with parties who will operate, manage, Maintain, and Repair the Premises and Improvements, or otherwise to perform Tenant’s obligations under this Lease. Tenant shall cause each of its Contractors to comply with this Lease. Any Contractor’s violation of this Lease is deemed Tenant’s breach of this Lease and is subject to **Article 14**. Tenant shall hire only Contractors that

A. are not delinquent to the City of Philadelphia for taxes;

B. have made all disclosures regarding political contributions that would be required if those contractors bid for, or were awarded, contracts directly by the City; and

C. are not, or would not be, otherwise disqualified from receiving any contract from the City.

16.5 Approved Contractors. The City approves the Barnes and the Calder Foundation as Contractors.

ARTICLE 17

STANDARD CITY PROVISIONS: DISCRIMINATION PROHIBITED; MEMBERSHIP FEES AND OTHER EXPENSES; NO DEBT TO CITY; NO GIFTS, GRATUITIES AND FAVORS

17.1. Discrimination Prohibited; Fair Practices Ordinance. Tenant shall comply with the provisions of the Philadelphia Home Rule Charter (the “**Charter**”), the Fair Practices Ordinance (Philadelphia Code Chapter 9-1100) and City of Philadelphia Mayoral Executive Order No. 04-86 (the “**Executive Order**”), as each may be amended from time to time. In Tenant’s use and occupancy of the Premises and activities under or related to this Lease, Tenant shall not discriminate or permit discrimination against any individual on the basis of actual or perceived race, ethnicity, color, sex (including pregnancy, childbirth, or a related medical condition), sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, familial status, source of income, genetic information; domestic or sexual violence victim status; or Human Immunodeficiency Virus infection status. Without limiting the applicable scope of the previous provisions of this Section 16.1, Tenant shall not discriminate against any individual on a basis prohibited by United States federal law, Commonwealth of Pennsylvania law, or any other law applicable to Tenant, the Premises, this Lease, or Tenant’s use and occupancy of the Premises under this Lease. Tenant’s breach of this Section 17.1 is an Event of Default under Section 14.1 without opportunity to cure and entitles the City to immediately exercise its remedies under Section 14.2, including to suspend or terminate this Lease.

17.2. Non-Indebtedness. By executing this Lease, Tenant represents and warrants that Tenant and Tenant’s parent companies, subsidiaries, affiliates, the Manager, and other Contractors, if any, are not currently indebted to the City for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of The School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan reasonably satisfactory to the City has been established. Tenant shall not at any time during the Term be indebted to the City for or on account of delinquent taxes (including, but not limited to, taxes collected by the City on behalf of The School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan reasonably satisfactory to the City has been established. Tenant shall inform the Commissioner in writing of Tenant’s receipt of any notices of delinquent payments to the City within five days after receipt of the notice. Tenant shall use good faith due diligence to not hire any Manager or other Contractor who is indebted to the City for or on account of delinquent taxes (including, but not limited to, taxes collected by the City on behalf of The School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan reasonably satisfactory to the City has been established. Tenant’s violation of this Section 17.2 is a material breach of this Lease. False certification or representation by Tenant is subject to prosecution under Title 18 Pa.C.S.A. Section 4904.

17.3 Non-Indebtedness of Tenant’s Contractors. Tenant shall endeavor in good faith to include the provision below in its written agreements with the Manager and all its other Contractors:

Contractor (or subcontractor, as the case may be) represents that contractor and contractor's parent company(ies) and subsidiary(ies) are not currently indebted to the City of Philadelphia ("City") for or on account of, and will not at any time during the term of this Contract be indebted to the City for or on account of, any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan reasonably satisfactory to City has been established.

If Tenant includes the required provision in the Management Agreement and its agreements with all its other Contractors, Tenant is not liable under this Lease for any Contractor's misrepresentations in connection with the provision or breach of the provision.

17.4 Prohibited Gifts.

17.4.1. In accordance with Executive Order No. 10-16, issued by the Mayor of Philadelphia on October 26, 2016, Tenant shall not offer, make, or render any "gift" to any City official or employee where the official or employee would be prohibited from accepting or receiving the gift under Section 2 of that Executive Order. Prohibited gifts include, for example, those from any person who at the time of rendering the gift or within the prior 12 months seeks or sought official action from the officer or employee, has operations or activities regulated by the officer's or employee's department, or has a financial or other substantial interest in acts or omissions taken by that officer or employee. The City recommends that Tenant review the full text of Executive Order No. 10-16 and to consult with private legal counsel if the Tenant has any questions or concerns about the Executive Order.

17.4.2. Any person who offers or gives anything of value to any City official or employee, the receipt of which would violate Executive Order No. 10-16, may be subject to sanctions with respect to future City contracts to the extent expressly stated in that Executive Order, which may range from disqualification from participation in a particular contract, to debarment, depending on the nature of the violation.

17.4.3. In the Executive Order, "**Gift**" means any payment, subscription, advance, forbearance, rendering or deposit of money, services, entertainment, invitation, food, drink, travel or lodging or anything of value given to, or for the benefit of, a City officer or employee, unless consideration of equal or greater value is received. "Gift" does not include a political contribution otherwise reportable as required by Applicable Laws and that is duly report in full compliance with Applicable Laws, a commercially reasonable loan made in the ordinary course of business, such as a home mortgage loan, or a gift received from a family member of the officer or employee.

17.4.4. If Tenant offers or gives, directly or indirectly, a Gift to any City official or employee in violation of Executive Order 10-16, Tenant will have committed a material breach under this Lease that entitles the City to immediately terminate or suspend this Lease and or to exercise one or more of its remedies provided in Section

14.2 or otherwise at law or in equity. In addition, Tenant's violation of Executive Order 10-16 may be subject to sanctions, including disqualification from participation in City contracts, debarment, or loss of financial assistance, depending on the nature of the violation.

17.5 Tax Requirements.

17.5.1. This Lease is entered into in the City of Philadelphia, Pennsylvania. Tenant's delivery, sale, or rental of goods in the City, or provision or performance of services in the City, is "doing business" in the City and subjects Tenant to the City's tax requirements, including one or more of the following taxes:

- A. Business Income and Receipts Tax
- B. Net Profits Tax
- C. City Wage Tax

17.5.2. Promptly following the Effective Date, if Tenant is not already paying the taxes listed immediately above, Tenant shall apply to the City of Philadelphia Department of Revenue for a tax account number and to file appropriate business tax returns as required by Applicable Laws. Applications may be submitted through the Business Services Portal at <http://business.phila.gov/Pages/Home.aspx> or to the Department of Revenue at:

Municipal Services Building
Public Service Concourse
1401 John F. Kennedy Blvd.
Philadelphia, PA 19102.

Questions about the application and the taxes should be directed to the Taxpayer Service Unit at: (215) 686-6600.

17.6 21st Century Minimum Wage. If Tenant has more than 25 employees, Tenant shall comply with the provisions of Philadelphia Code Chapter 17-1300 as they exist on the Effective Date and on the date of each duly made amendment to the Lease. Tenant shall promptly provide to the City documents and information that verify Tenant's compliance with the requirements Chapter 17-1300. Tenant shall notify its affected employees about the wages that are required to be paid pursuant to Chapter 17-1300.

ARTICLE 18
TENANT'S REPRESENTATIONS AND WARRANTIES

18.1. Representations and Warranties. Tenant represents and warrants the following:

18.1.1. The Collaboration Agreement delivered to Landlord is a complete, accurate copy of the Collaboration Agreement, and that agreement remains in effect and has not been amended in any way.

18.1.2. Tenant is a Pennsylvania nonprofit corporation validly formed and existing under the laws of the Commonwealth of Pennsylvania.

18.1.3. **Exhibit E** contains true, complete copies of Tenant's articles of incorporation, by laws, and IRS Form 1023 application to the United States Internal Revenue Service asking the Internal Revenue Service to determine that Tenant is a 501(c)(3) charitable, nonprofit corporation under federal law. The documents contained in Exhibit E are unmodified from the copies as attached.

18.1.4. The person signing this Lease in the name of Tenant is authorized to do so by Tenant's board of directors' resolution. A true and complete copy of the board's authorizing resolution is attached in **Exhibit F** and that resolution remains in effect without any modification.

18.2 Tenant's Corporate Status. Tenant shall promptly send notice to City of any change in Tenant's corporate status under Pennsylvania law.

ARTICLE 19 NOTICE

19.1. Notices. To be effective, any notice, approval, request, demand or other communication required or desired to be given pursuant to this Lease must be in writing, addressed to the persons and at the addresses listed below, and sent by (1) professional messenger service or air express service with signed receipt obtained, (2) sent by United States certified mail, return receipt requested, or (3) next-business day delivery using a nationally recognized express courier service:

If to City: Commissioner
 Department of Parks and Recreation
 One Benjamin Franklin Parkway – 10th floor
 1515 Arch Street
 Philadelphia, PA 19102

With a copy to: Commissioner
 City of Philadelphia Department of Public Property
 City Hall – Room 790
 Philadelphia, PA 19107

and to: Divisional Deputy City Solicitor,

Real Estate and Development Division
City of Philadelphia Law Department
One Parkway Building – 17th Floor
1515 Arch Street
Philadelphia, PA 19102

If to Tenant: CP 2023
2100 Benjamin Franklin Parkway
Philadelphia, PA 19102
Attention: President

with a copy to: The Barnes Foundation
2025 Benjamin Franklin Parkway
Philadelphia, PA 19130
Attention: General Counsel

with a copy to: Blank Rome LLP
One Logan Square
18th and Cherry Street
Attention: Bruce A. Eisenberg and Peter F. Kelsen

19.2. Delivery. Notice sent in accordance with Section 19.1 is deemed received upon delivery, as shown on the receipts obtained, or upon the recipient's refusal to accept delivery.

19.3. Change of Address. City and Tenant may each change its respective address or the address(es) to which the other party must provide notice or copies of notice by giving written notice to the other in accordance with the provisions of Section 19.1. Notices may be given by legal counsel for a party, but only if given in the manner required in this Article.

ARTICLE 20

ESTOPPEL CERTIFICATES; NONDISTURBANCE AGREEMENT

20.1. Estoppel Certificates. The City and Tenant each agree that, within thirty 30 days following its receipt of a written request from the other party (but not more than twice in any one-year period), it will execute and deliver an Estoppel Certificate to the requesting party and its designee. The term "**Estoppel Certificate**" means a written statement that certifies

1. that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of the modifications and certifying that this Lease, as modified, is in full force and effect and the date to which the Rent, Additional Rent and other charges or sums due are paid in advance, if any;

2. that, to the actual knowledge of the certifying party (without investigation), there are no uncured defaults on the part of the City or Tenant, or if there exist any

uncured defaults on the part of the City or Tenant, stating the nature of the uncured defaults; and

3. that, to the actual knowledge of the certifying party (without investigation), the correctness of other factual information respecting the status of this Lease as may be reasonably requested by the requesting party.

20.2 Mortgages. The City represents and warrants to Tenant that, on the Effective Date, neither the Premises nor any of the City's interest in them is subject to a lien of any mortgage.

20.3 [Reserved.]

20.4. City's Rights. Despite any other provision of this Lease, the City may take any action in its sole discretion regarding its legal existence, general operations, public financings and issuance of debt instruments, and other matters, that may have the legal effect of creating a covenant, condition, restriction, or encumbrance affecting the Premises as part of a general covenant, condition, restriction, or encumbrance affecting the City's assets. If the City enters into a financing under which the City specifically pledges the Premises or Building as collateral, the City shall provide to Tenant a subordination, nondisturbance, and attornment agreement that the City and its lender execute to protect Tenant's rights and interests in the Premises.

ARTICLE 21 APPROVALS BY CITY

21.1 Commissioner Is Approving Official for City Generally. Except as expressly specified otherwise in this Lease, wherever this Lease requires the approval, consent, or review of the City generally, that approval, consent or review is not valid and may not be relied upon or enforced by Tenant unless given, made or performed by the Commissioner or other member of the Department as the Commissioner designates in writing, and is given, made or performed in the manner required (for example, if the Lease requires written approval, then in writing).

21.2 Approvals by Other City Officials and Agencies. Wherever this Lease requires the approval, consent, or review of a specific City official or agency other than the Commissioner, that approval, consent or review is not valid and may not be relied upon or enforced by Tenant, unless given, made or performed by the specified official or agency and is given, made or performed in the manner required (for example, if the Lease requires written approval, then in writing).

21.3. City Approvals Not Approval Under Applicable Laws. The City's approval of any matter submitted to it by Tenant under this Lease, regardless of the official granting the approval, is not approval by any City of Philadelphia department, board, or commission otherwise required under Applicable Laws.

21.4. City Approval Not a Representation or Warranty. The City’s approval of Tenant’s designs, plans, and specifications, or its approval of any report, information, or request that Tenant provides to City under this Lease, is not a representation or warranty by the City regarding the accuracy or suitability, or any other quality, of the designs, plans, specifications, report, information, or request. The City’s help for Tenant to obtain any approval required under Applicable Laws is not a representation or warranty by the City regarding the accuracy, suitability, or any other quality, of the matter for which the Tenant seeks approval. Tenant relies on its own judgment in determining the accuracy, suitability, or any other quality, of the matter for which the Tenant seeks City’s approval and any approval required by Applicable Laws.

21.5 Reasonableness. Except where this Lease provides otherwise, wherever this Lease states that any matter is subject to the City’s or a City official’s approval or disapproval, the City may not unreasonably delay, withhold, or condition its approval. The City is deemed to be acting reasonably if the City, as it deems circumstances warrant, bases its decision about the matter on considerations in the City’s municipal, proprietary, or political interests, or any combination of them. Any City department, board, or commission reviewing any matter related to this Lease under Applicable Laws, however, is not bound by the review standard in this Section 21.5, and its decision making is subject only to Applicable Laws.

ARTICLE 22
[RESERVED]

ARTICLE 23
QUIET ENJOYMENT; CITY’S RIGHT TO INSPECT PREMISES AND IMPROVEMENTS

23.1. Quiet Enjoyment. So long as no Event of Default exists, Tenant may peaceably and quietly hold and enjoy the Premises for the Term without hindrance or interruption by City or anyone lawfully claiming through City. Tenant’s peaceable and quiet enjoyment of the Premises under this **Section 23.1** is subject to the provisions of this Lease, including Section 23.2.

23.2 City’s Right to Enter Premises and Improvements. Despite Tenant’s quiet enjoyment of the Premises, the City may enter the Premises and Improvements upon notice to Tenant,

1. to perform the City’s municipal duties, such as (for example only without limitation) delivering police and fire services, inspections by licensing departments, and other functions pursuant to Applicable Laws;
2. exercising City’s remedies under this Lease; and
3. not more than once each year to determine Tenant’s compliance with the Lease.

23.3 Entry for Emergencies. Despite Section 23.2, in the case of an emergency, the City may enter the Premises and Improvements immediately without notice.

ARTICLE 24 GENERAL PROVISIONS

Commissions. City and Tenant each represent and warrant to the other that they have employed no broker, finder or other person in connection with the transactions contemplated under this Lease that might result in the other party being held liable for all or any portion of a commission under this Lease. Tenant agrees to indemnify and hold the City harmless from and against all claims and liability arising by reason of the incorrectness of Tenant's representation and warranty made by Tenant in this Section, including reasonable attorneys' fees and litigation costs.

24.2 No Personal Liability of Tenant. No officer, director, trustee or employee of Tenant is liable, personally or otherwise, with respect to this Lease or the transactions it contemplates, nor is the property of any such person subject to attachment, levy, execution or other judicial process with respect to this Lease or the transaction it contemplates, except in the case of fraud or intentional misrepresentation or any criminal act. Nothing contained in this **Section 24.2** precludes the City from obtaining injunctive or other equitable relief against Tenant to the extent that Applicable Laws permits.

24.3 Amendments. This Lease can only be amended, modified, or supplemented by a written agreement that identifies itself as an amendment to this Lease, that is approved in advance by Philadelphia City Council by ordinance that becomes law, and that is approved and signed by the persons holding the positions of the officials who have signed this Lease below. This Lease cannot be amended, modified, or supplemented by oral agreement, whenever made, by any official or employee of the City, or by any course of conduct between the City and Tenant.

24.4 Time of the Essence; Force Majeure. Time is of the essence for the performance and observation of each provision of this Lease. If Tenant reasonably cannot satisfy any of its non-monetary obligation under this Lease, or meet any conditions deadline under this Lease, because of a Force Majeure Event, then Tenant is excused from performance of that obligation until the cessation of the Force Majeure Event or until Tenant reasonably can take measures to fulfill the obligation or satisfy the condition despite the Force Majeure Event. The immediately preceding sentence applies to Tenant's obligations under this Lease regardless of whether this Lease (1) requires Tenant to satisfy the obligation within a stated time period or in general terms, such as where Tenant is required to proceed with diligence, and or (2) expressly provides that the obligation is subject to extension because of a Force Majeure Event. Tenant shall take reasonable measures to comply with Tenant's obligation by alternative means despite the Force Majeure Event as soon as reasonably practicable.

24.5 Strict Enforcement of Lease. Either party may enforce all provisions of this Lease strictly, regardless of (1) any law, usage, or custom to the contrary, (2) any conduct of the

enforcing party in refraining from enforcing any provisions of this Lease at any time, (3) any conduct of the enforcing party in refraining from exercising its rights and remedies under this Lease, and (4) any course of conduct between the City and Tenant. Any conduct or custom between City and Tenant does not create a custom that is in any way or manner contrary to any specific provision of this Lease, and does not in any way or manner modify this Lease.

24.6 No Implied Consent. The City's failure to respond orally or in writing to any request or offer from Tenant to modify or waive any of Tenant's obligations under this Lease is not the City's consent to Tenant's request or offer. Similarly, Tenant's failure to respond orally or in writing to any request or offer from the City to modify or waive any of the City's obligations under this Lease is not Tenant's consent to the City's request or offer. Each party shall comply with its obligations under this Lease unless and until a request or offer to modify or waive any provision of this Lease is expressly agreed to in writing by the party to whom the request or offer is made and, if applicable, the Parties execute an amendment in accordance with Section 24.3.

24.7 No Partnership. Nothing in this Lease creates a partnership, joint venture, or association between the City and Tenant, or obligates either of them in any way for the debts or obligations of the other party. Neither the method of computing Additional Rent, nor any other provision contained in this Lease, nor any acts of the City or Tenant, create any relationship between the City and Tenant other than the relationship of landlord and tenant.

24.8 Memorandum of Lease. Within 30 days after execution of this Lease, Landlord and Tenant shall execute and deliver, in recordable form, a short form or memorandum of this Lease which Tenant may record at its sole cost and expense in the Department of Records for Philadelphia County, Pennsylvania in the form set forth as **Exhibit H**.

24.9 Successors and Assigns. Without limiting or modifying the restrictions set forth in **Article 16** above regarding Transfers, this Lease is binds and inures to the benefit of the parties to this Lease and their respective permitted successors and assigns (to the extent this Lease is assignable).

24.10 No Third-Party Rights. Despite any other provision of this Lease, this Lease (1) does not create or confer any rights, remedies, or claims on any person or entity not a party to this Lease, (2) does not create obligations or responsibilities of the parties to this Lease to any person not a party to this Lease, and (3) does not permit any person or entity not a party to this Lease to rely on this Lease's provisions.

24.11 Governing Law; Venue. This Lease is made in Philadelphia, Pennsylvania, and is be governed by the laws of the Commonwealth of Pennsylvania, without giving effect to its choice of law provisions. The City and Tenant each consent to the exclusive jurisdiction of the Court of Common Pleas for Philadelphia County or the federal district court for the Eastern District of Pennsylvania and their courts of appeal. The City and Tenant each waive their right to remove venue for any litigation between them to another jurisdiction for inconvenience or any other reason.

24.12 Interpretation. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against either the City or Tenant. When the context of this Lease requires, the neuter gender includes the masculine and feminine, and the singular includes the plural.

24.12.1. The City and Tenant have each participated equally in the negotiation and writing of this Lease. The rule of construing or interpreting any ambiguities in an agreement against the drafter of the agreement does not apply in connection with this Lease.

24.12.2. Unless expressly provided otherwise, all references in this Lease to sections, exhibits, and attachments refer to sections, exhibits and attachments of this Lease.

24.12.3. The captions used in this Lease are for the purpose of convenience only and do not limit or extend the meaning of any provision of the Lease.

24.12.4. Unless expressly provided otherwise in this Lease, all references in this Lease to the Premises means all or part of the Premises, and reference to the Improvements means all or part of the Improvements.

24.12.5. In this Lease, the following rules of interpretation apply:

A. The words “include” “includes” and “including” have the same meaning as “including but not limited to.”

B. The word “shall” signals an obligation and the word “must” signals a condition precedent.

C. The word “may” signals discretionary authority or, when used in the phrase “may not” or any similar phrase, signals a prohibition.

24.12.6. Each reference in this Lease to a specific City department, board, commission, office, or other agency, or to the title of a specific City officer, means that department, board, commission, office, agency, or officer and the legal successor to its or their powers and duties.

24.13 Integration Clause. This Lease and the exhibits attached to it and incorporated into it is the final, complete, and exclusive agreement between the City and Tenant regarding the Premises and Tenant’s use and occupancy of them. There are no agreements between the City and Tenant regarding the Premises and Tenant’s use and occupancy of them except as expressed in this Lease and the exhibits attached to this Lease. All prior negotiations and agreements between the City and Tenant with respect to the Premises and Tenant’s use and occupancy of them are superseded by this Lease.

24.14 Survival. Despite any other provision of this Lease, those provisions of this Lease which by their nature would reasonably be expected to remain effective after this Lease ends survive the Lease Ending Date and continue to bind the party to which they apply.

24.15 Severability. If any one or more of the provisions in this Lease is held by final, unappealable court order to be invalid, illegal, or unenforceable in any respect, the subject provision(s) is deemed amended to the least extent necessary to render it enforceable, and the invalidity, illegality or unenforceability does not affect any other provision of this Lease. If the invalid, illegal, or unenforceable provision is Section 5.2 [Uses Required or Permitted] or 5.3 [Tenant's Use Is A Material Inducement...], however, then either the City or Tenant may terminate this Lease upon 180 days prior written notice to the other, except that the City may not terminate this Lease pursuant to this Section 24.15 as long as Tenant continues to comply with the original provisions of Section 5.2 and 5.3.

24.16 Counterparts. Each copy of this Lease executed with original signatures is an original of this Lease for all purposes. The parties may execute this Lease in one or more counterparts, each of which is an original, and all of which together constitute a single instrument. To facilitate execution of this Lease, the parties may execute this Lease by electronic means, including electronic signatures through software such as DocuSign, or by exchanging PDF copies of signed signature pages, in each case promptly followed by exchanging hard copy signature pages.

[Remainder of page intentionally left blank. Signature page follows.]

AS EVIDENCE OF THEIR AGREEMENT TO THE ABOVE PROVISIONS, City and Tenant have caused their duly authorized officials and representatives to execute and deliver this Lease on the Effective Date.

APPROVED AS TO FORM
DIANA P. CORTEZ, CITY SOLICITOR

CITY:
DEPARTMENT OF PARKS AND RECREATION

Per: _____
Lawrence K. Copeland
Senior Attorney

By: _____
Name: Katharine Ott Lovell
Title: Commissioner

TENANT:
CP 2023

By: _____
Name: Marsha Perelman
Title: President

EXHIBIT A

TO

LEASE

BETWEEN

CITY OF PHILADELPHIA

AND

CP 2023

PREMISES DESCRIPTION

LEASE REFERENCES:

DEFINITIONS: PREMISES

BACKGROUND PARAGRAPH A

EXHIBIT B

TO

LEASE

BETWEEN

CITY OF PHILADELPHIA

AND

CP 2023

ACCESS LICENSE AGREEMENT

LEASE REFERENCE:

BACKGROUND PARAGRAPH G

EXHIBIT C

TO

LEASE

BETWEEN

CITY OF PHILADELPHIA

AND

CP 2023

BILL NO. _____.

LEASE REFERENCE:

BACKGROUND PARAGRAPH J

EXHIBIT D

TO

LEASE

BETWEEN

CITY OF PHILADELPHIA

AND

CP 2023

COMMENCEMENT DATE LETTER [FORM]

LEASE REFERENCE:

SECTION 2.5

[Department of Parks and Recreation letterhead]

[date]

Marsha Perelman, President
CP 2023 LLC
2100 Benjamin Franklin Parkway
Philadelphia, PA 19102

Re: Lease (“**Lease**”), dated _____, 2022, between the City of Philadelphia (the “**City**”) and CP 2023 (the “**Tenant**”)

Dear Ms. Perelman:

The purpose of this letter is to confirm the Lease’s Commencement Date.

As provided in Lease Section 2.4, the Commencement Date of the Lease’s Operating Term is the date that all of the Conditions Precedent have been satisfied. Lease Section 2.5 requires the City and Tenant to execute a letter that confirms the Commencement Date promptly following satisfaction of the Conditions Precedent.

On _____, Tenant satisfied the last of the Conditions Precedent listed in Lease Sections 2.4.1—2.4.8.

Accordingly, the Lease’s Commencement Date is _____. As provided in Lease Section 2.3, the Operating Term expires at 5:00 PM _____, the 99th anniversary of the Commencement Date.

Please countersign this letter and the three attached copies of it on behalf of the Tenant. You may keep a fully executed copy of this letter for your organization’s files. Kindly return the remaining copies of it to Lawrence K. Copeland, Senior Attorney, City of Philadelphia Law Department, One Benjamin Franklin Parkway – 17th Floor, 1515 Arch Street, Philadelphia, PA 19102.

Unless defined otherwise in this letter, I’ve used capitalized terms in this letter with the meanings given to them in the Lease.

[Remainder of this page is intentionally blank.]

If you have any questions, please do not hesitate to call Mr. Copeland at 215-683-5039.

Very truly yours,

By: _____

Name: Kathryn Ott Lovell

Title: Commissioner

CP 2023

Confirmed and agreed to:

By: _____

Name: Marsha Perelman

Title: President

cc: Kathryn Ott Lovell, Commissioner of Parks and Recreation
Anne Fadullon, Director, Planning and Development
Lawrence K. Copeland, Senior Attorney, Philadelphia Law Department
Peter Kelsen, Esquire, Blank Rome LLP
Sara Geelan, The Barnes Foundation

EXHIBIT E

TO

LEASE

BETWEEN

CITY OF PHILADELPHIA

AND

CP 2023

TENANT'S CORPORATE DOCUMENTS

LEASE REFERENCE:

SECTION 18.1.3

EXHIBIT F

TO

LEASE

BETWEEN

CITY OF PHILADELPHIA

AND

CP 2023

TENANT'S BOARD OF DIRECTORS AUTHORIZING RESOLUTION

LEASE REFERENCE:

SECTION 18.1.4

CP 2023
RESOLUTIONS OF THE BOARD OF TRUSTEES
MARCH 10, 2021

The Board of Trustees ("Board") of CP 2023, a Pennsylvania nonprofit corporation, acting pursuant to the procedures established by the Pennsylvania Nonprofit Corporations Act and by its bylaws, hereby adopts the following resolutions:

WHEREAS, CP 2023 has been in discussions with the City of Philadelphia ("City") in order to secure a long-term ground lease ("Ground Lease") for the construction of a meditative art space on the Benjamin Franklin Parkway in Philadelphia dedicated to the work of Alexander Calder and his artist forebearers (the "Calder Project");

WHEREAS, CP 2023 and the City have negotiated the terms and conditions of said Ground Lease, setting out each of the parties' roles and responsibilities with respect to the Calder Project, as set forth in the draft Lease, attached hereto as Exhibit A; and

WHEREAS, CP 2023 will seek Philadelphia City Council authorization by ordinance for one or more City officials to execute the Ground Lease; and

WHEREAS, CP 2023 has applied for and has been awarded certain grant funds from the Commonwealth of Pennsylvania, and may apply for future funds from the Commonwealth and other sources;

NOW THEREFORE, the Board of CP 2023 has:

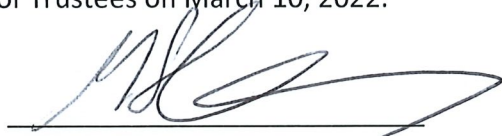
RESOLVED that the Ground Lease between CP 2023 and the City of Philadelphia is approved by the Board in substantially the form set forth in Exhibit A hereto;

FURTHER RESOLVED, that the appropriate officers of CP 2023 be, and each of them is, authorized and directed, in the name and on behalf of CP 2023, to enter into the Ground Lease with the City, or such other related City agency as may be required, with such deletions, insertions, changes, and modifications as the officers executing the same, acting upon legal advice, may approve, and such officers' approval shall be conclusively evidenced by his or her execution of such Ground Lease;

FURTHER RESOLVED, that the appropriate officers of CP 2023 are authorized to accept and utilize public grant money from the Commonwealth of Pennsylvania as provided through the City of Philadelphia's Philadelphia Authority for Industrial Development, or such other City agency as required, for the construction or benefit of the Facility; and

FURTHER RESOLVED, that the appropriate officers of CP 2023 be, and each of them is authorized and directed to take and do, or cause to be taken or done, such further acts and deeds to execute and deliver on behalf of CP 2023 such other documents, papers, and instruments, and to pay all fees and expenses as are necessary, appropriate, advisable or required to effect the purpose and intent of the foregoing resolutions.

IN WITNESS WHEREOF, I hereby certify that these resolutions were duly adopted by the CP 2023 Board of Trustees on March 10, 2022.



Michael Sternberg
Secretary

EXHIBIT G

TO

LEASE

BETWEEN

CITY OF PHILADELPHIA

AND

CP 2023

[RESERVED]

LEASE REFERENCE:

DEFINITION:

SECTION 20.3

EXHIBIT H

TO

LEASE

BETWEEN

CITY OF PHILADELPHIA

AND

CP 2023

MEMORANDUM OF LEASE

LEASE REFERENCE:

SECTION 2.4.8

EXHIBIT I

TO

LEASE

BETWEEN

CITY OF PHILADELPHIA

AND

CP 2023

MEMORANDUM OF COLLABORATION AGREEMENT

LEASE REFERENCE:

SECTION 6.2

Memorandum of Collaboration Agreement for the Calder Philadelphia Project

THIS MEMORANDUM OF COLLABORATION AGREEMENT (“**Memo**”) gives notice of a Collaboration Agreement dated July 26, 2021 (the “**Collaboration Agreement**”) as set forth below. Capitalized Terms used in this Memo and not defined in this Memo are defined in the Collaboration Agreement.

Parties to the Collaboration Agreement: the Calder Foundation (“**CALDER**”), the Barnes Foundation (“**BARNES**”), and CP 2023 (“**CP**”) (collectively, the “**Parties**”).

Purpose of the Collaboration Agreement: To create an environment for outstanding installations and presentations to further the experience of the art of Alexander Calder, and the Calder family of artists, in a venue specifically designed to house a rotating selection of Alexander Calder’s artworks in a unique architectural and landscape setting (the “**Project**”).

Term of the Collaboration Agreement: From the date of the Collaboration Agreement until the 99th anniversary of the public opening of the Facility or the earlier expiration of the Lease between CP and the City (the “**Term**”). If the Parties are interested in renewing the Term, then at least one year before the end of the Term, the Parties shall negotiate renewing or extending the Term.

OBLIGATIONS OF THE PARTIES:

CP: To provide strategic direction for the Project, to guide the building and planning process for a facility to house and present the Project (the “**Facility**”), to secure a lease for the land and obtain funding for the building project, and to raise an endowment to support its operations.

Initial Responsibilities prior to the public opening of the Facility:

- To be solely responsible for raising sufficient funds to undertake all financial responsibility for the design, construction, and furnishing of the Facility, as well as the initial installation of artwork for the Project. CP shall raise an amount not less than the final project budget, currently estimated at \$40 MM (the “**Building Budget**”); and not less than \$20 MM (the “**Endowment**”) which will

be granted to BARNES as a restricted fund to provide operating support for the Project during the Term.

- To be responsible for securing from the City of Philadelphia a 99-year lease for the land on which the Facility will be built (the “**Lease**”).
- To ensure the Facility is satisfactory to all Parties and maintain a “Building Committee” that will be responsible for the oversight of construction expenses, and for ensuring that the expenses will be within the Building Budget.
- To monitor the projected construction costs of the Facility and have final approval of the design of the Facility.
- To approve, in advance, any agreement for naming rights to ensure that the naming association does not pose unreasonable reputational risks to the Parties.

Ongoing Obligations of CP after the Facility is constructed and opened:

- The CP Board will act as advisors to the BARNES Board of Trustees, providing strategic direction for the Project to ensure that it remains a project that meets the curatorial and programming standards of both BARNES and CALDER throughout the Term.
- The CP Board will address any shortcomings found through the review of operations and programming by adjusting the strategic priorities of the Project, and will set priorities and goals that take into account the reasonably projected annual operating funds for the Project.

CALDER: *To provide the artistic vision, with historical and curatorial expertise in the Calder family artists (the “**Calder Artists**”) and their work, and ensure that only the highest quality loans of works of art by the Calder Artists are presented for display at the Facility.*

After CP raises the funds or has binding commitments for the Building Budget and the Endowment, secures the Lease, and satisfactorily completes construction of the Facility:

- To provide to BARNES ongoing and new loans of works of art by Calder Artists (including outdoor works) that are in its view appropriate for the building and grounds of the Facility and accepted by BARNES and the CP Curatorial Committee, throughout the Term.

- To collaborate with BARNES in organizing installations of art at the Facility.

BARNES: *To collaborate with Calder to organize the installations and present them to the public together with related public programming and education programs, provide management and administrative support of the Facility and the Project, and to care for the works of art in its custody and the Facility.*

After CP raises the funds or has binding commitments for the Building Budget and the Endowment, secures the Lease, and satisfactorily completes construction of the Facility:

- BARNES will be responsible for the daily management of the Facility and the Project, including the following:
 - Organization of Installations. Collaborating with CALDER in organizing installations of art at the Facility, in furtherance of the direction of an installation program established by the Curatorial Committee.
 - Facility Maintenance. Maintaining museum quality environmental conditions at the Facility, and ensuring art handling, installation and monitoring of the condition of the loaned works of art at the standard it treats its own collection; ensuring the Facility and its grounds are maintained to the standard of BARNES facilities; and ensuring appropriate security for and insurance of the Facility.
 - Project Management. Ensuring the appropriate operations to maintain the Facility as meditative art environment open to the public, including personnel, signage and equipment for ticketing, wayfinding and in-gallery education; and marketing and publicizing the Project to maximize visitation, with an aim of achieving a racially, culturally, economically and generationally diverse audience.
 - Budgetary and Developmental Support. Providing dedicated development support to the Project to seek contributed funds to supplement the Endowment and earned income to meet Project expenses; creating an annual operating budget for the Project, in consultation with the CP Board, based upon the anticipated income from the Endowment, ticket sales, and other

earned and contributed income, which must be approved by the BARNES's Board; paying all expenses of operating the Facility and the Project.

GOVERNANCE OF CP DURING THE TERM:

Composition of the CP Board of Trustees: CP is a Type 1 Supporting Organization of BARNES. The CP Board will be made up of individuals nominated by BARNES and CALDER, and the majority of the Board of Trustees of CP will be nominated by BARNES, with the number of voting BARNES Trustees exceeding the number of CALDER nominees by one. CP shall have two advisory committees as follows:

Curatorial Committee: CP will maintain a Curatorial Committee made up of individuals nominated by BARNES and CALDER, and the majority of the Curatorial Committee will be nominated by CALDER, with the number of CALDER nominees exceeding the number of BARNES nominees by one.

Building Committee: CP will maintain a Building Committee throughout the Term, unless the Parties mutually agree to dissolve the Building Committee after the Facility's public opening. The Building Committee will oversee the design and construction of the Facility, subject to the periodic review of the CP Board.

DEFAULT AND REMEDIES:

Default by CP.

- Remedies. Upon the occurrence and during the continuance of an Event of Default by CP, the other Parties will have the following remedies:
 - BARNES' Right to Assume CP's Obligations. Upon timely notice to CALDER, BARNES may assume the obligations of CP, provided that BARNES cures CP's Event of Default within 90 days of such assumption of obligations by BARNES. BARNES will have no obligation to assume the obligations of CP due to an Event of Default by CP or otherwise.
 - BARNES and CALDER's Right to Terminate. Each of BARNES and CALDER may terminate the Collaboration Agreement upon 90 days' written notice to the other Parties, provided that BARNES has been given a reasonable opportunity to assume CP's obligation, whereupon the Parties will negotiate in good faith a plan for the discontinuation of the Project.

Default by BARNES or CALDER.

- Remedies. Upon the occurrence and during the continuance of an Event of Default by CALDER or BARNES, the other party may terminate this Agreement upon 90 days' written notice to the other Parties, whereupon the Parties will negotiate in good faith a plan for the discontinuation of the Project.
- Special Provision for Default Based on Programming Shortcomings:
A continuing failure or multiple failures over a two (2) year period to meet the curatorial and programming standards agreed by the Parties that materially impairs the success of the Calder Philadelphia Project, and are not satisfactorily corrected, shall result in an event of default (by CP or Barnes, as the case may be) if CALDER has made at least two complaints in writing to the CP Board of Trustees, with at least six (6) months' time between each complaint, during that two (2) year time period.

EXPIRATION OR TERMINATION OF THE AGREEMENT:

Wind Down. Upon, or in preparation for, the expiration or termination of the Collaboration Agreement, the Parties shall agree on an orderly plan for the wind down of Project operations, including without limitation, a reasonable period for the continuation of the Loan Agreements and intellectual property licenses then in effect.

Governance of CP. Upon termination of the Collaboration Agreement, BARNES as the sole Member of CP will have the right to remove CALDER nominated members of CP's Board and revise its bylaws and mission statement to support BARNES in matters unrelated to the Project. CP and BARNES will be free to put the Facility to an alternate use (subject to the Lease).

Endowment. Upon termination of the Collaboration Agreement, the Endowment will remain the sole and exclusive property of BARNES to be used for the continued care and operation of the Facility as well as any alternate program to be presented at the Facility as may be agreed between BARNES and CP, (subject to the Lease) and consistent with any applicable donor-imposed restrictions on Endowment funds.

MISCELLANEOUS PROVISIONS:

Amendments/No Assignment. The Collaboration Agreement may only be amended by a written agreement signed by the Parties. Except for BARNES' right to assume the obligations of CP in the event CP defaults, the Collaboration Agreement may not be assigned by any Party without the express written permission of the other Parties.

Indemnification. Each Party will indemnify and hold harmless the other Parties from and against any and all claims, demands, liabilities, losses, damages (including indirect, punitive and consequential damages), judgments and any costs and expenses incurred in defending against the same, resulting from claims made by third parties arising out of such Party's acts or omissions, except to the extent such claims are caused by the negligence or willful misconduct of the Party seeking indemnification.

Governing Law and Jurisdiction. The Collaboration Agreement is governed by the laws of, and will be enforced in, Pennsylvania.

No Agreement. This Memo is only a summary in nature, and does not contain all of the provisions of the Collaboration Agreement.

EXHIBIT J

TO

LEASE

BETWEEN

CITY OF PHILADELPHIA

AND

CP 2023

ENDOWMENT AGREEMENT [APPROVED FORM]

LEASE REFERENCE:

SECTION 6.1.2

[Specimen Form]
**Endowment Agreement
between
CP 2023 and The Barnes Foundation**

This Endowment Agreement is made and effective _____
between CP 2023, a Pennsylvania nonprofit corporation, and The Barnes
Foundation, a Pennsylvania nonprofit corporation (the “**Barnes**”).

Background

A. Pursuant to a lease dated _____, 2022 (the “**Lease**”) with the City of Philadelphia (the “**City**”), CP 2023 constructed a museum building (the “**Museum Building**”) on City-owned land along Benjamin Franklin Parkway in Philadelphia, Pennsylvania.

B. CP 2023 and the Barnes entered into an agreement dated July 26, 2021, with the Calder Foundation under which the Calder Foundation will loan artwork by the Calder family of artists to the Barnes to display in the Museum Building (the “**Collaboration Agreement**”).

C. CP 2023 and the Barnes want to provide assurance to the City that if the “Primary Use” (as defined in the Lease) can no longer be fulfilled, or if the Lease otherwise ends, the City will have a source of funds to maintain and repair the museum building.

D. The City will benefit from CP 2023 and the Barnes entering into this agreement and complying with this agreement.

ACCORDINGLY, CP 2023 and the Barnes, intending to be legally bound, agree as follows:

Not later than three years following issuance of a Certificate of Occupancy for the Museum Building pursuant to the Lease, CP 2023 shall transfer not less than \$20,000,000 (the “**Grant**”) to the Barnes upon the following terms:

1. The Barnes shall add the Grant to its endowment fund as a permanently restricted endowment gift. With respect to spending endowment funds, the Barnes may make an election under Section 5548(c) of the Pennsylvania Nonprofit Corporation Law to adopt a total return investment policy, under which “income” means a percentage of the fair market value of the endowment. The Barnes shall invest and maintain the Grant principal in perpetuity.

2. So long as the Collaboration Agreement remains in effect, the Barnes shall apply to the Grant the Barnes’ income or annual spending rate set by its Board of Trustees (the “**Draw**”).¹ Except to the extent the Barnes’

¹ For example, without limitation, the Barnes’ Board of Trustees may establish an annual spending rate for its endowment funds of 5% of total Grant assets, which would include both accumulated Grant income and Grant principal. It

income or spending rate necessarily includes a portion of the Grant's principal, the Barnes shall not spend Grant principal. The Barnes shall apply the Draw solely to (A) expenses incurred by CP 2023 or the Barnes in fulfilling CP 2023's obligations under the Lease to Maintain and Repair the Premises and Improvements; and (B) expenses the Barnes incurs in meeting its obligations under Section 5(e) of the Collaboration Agreement.

3. If at any time the Collaboration Agreement is no longer in effect, the Barnes shall apply the Draw as follows:
 - A. To fulfill CP 2023's obligation under the Lease to Maintain and Repair the Premises and Improvements, including without limitation the Museum Building and its grounds, to the higher standard of (A) the Lease's Maintenance and Repair requirements, and (B) equivalent to the Barnes Foundation's building located at 2025 Benjamin Franklin Parkway and the building's adjacent grounds.
 - B. To ensure appropriate security for the Museum Building and any works of art that may be displayed or stored in or around the Museum Building and grounds.
 - C. If the budgeted expenses for the Maintenance, Repair, and security requirements can be met with less than the full amount of the Draw, or are available to the Barnes in full from other sources, then the Barnes may apply the remaining portion of the Draw, or all of the Draw, as the case may be, to the general operations and programming of the Museum Building as an art exhibition venue, subject to the mutual consent of the Barnes and CP 2023.
 - D. The Barnes' application of some or all the Draw to the Museum Building's general operations and programming may include, without limitation, costs associated with planning and organizing art installations, mounting art exhibitions, facility maintenance, project management, budgetary and developmental support, branding, marketing, fundraising, and administrative costs associated with the development and operation of an art exhibition program open to the public, and for related educational programming.

is possible in any given year that 5% of the Grant's total assets would include some amount of Grant principal.

4. If any part of the Draw is not expended in the year to which the Draw is attributable, then the Barnes may hold the remaining portion of that year's Draw and apply it in subsequent years to any of the restricted purposes set forth in Sections 2 and 3 above.
5. If CP 2023 and the Barnes do not use the Premises for the Primary Use or a Permitted Use for more than one year and for any three-month period during that time fail to Maintain and Repair the Premises and Improvements as necessary for the Primary Use or Permitted Uses and to keep them neat and an attractive feature along Benjamin Franklin Parkway, or if the Lease Ending Date has occurred, then the Barnes shall continually distribute payments (quarterly, or more frequently as needed to pay invoices or incurred costs) from the annual Draw of amounts that are necessary to pay any and all necessary and prudent Maintenance and Repair to any party, including the City, that assumes or becomes legally obligated to manage, Maintain, and Repair some or all of the Premises and Improvements; subject, however, to the restriction that the Draw may be used only for Maintenance and Repair of the Premises and Improvements and may not be used for the programming or operations of the Premises and Improvements without the further agreement of CP 2023 and the Barnes.

If at any time CP 2023 and the Barnes, or either of them, come to an agreement with the City to resume tenancy of the Premises, however, then upon CP 2023 and the Barnes, or either of them, resuming tenancy of the Premises, the Barnes' use of the Draw reverts to its purposes under Sections 2 and 3 of this Endowment Agreement.

6. This Endowment Agreement survives the Lease Ending Date.
7. Each capitalized word and phrase not defined in this Endowment Agreement has the meaning assigned to it in the Lease, including the words and phrases "Lease Ending Date," "Maintain," "Maintenance," "Repair," "Premises," and "Improvements."
8. General Provisions:
 - A. No Amendments Without Prior City Approval. CP 2023 and the Barnes shall not amend this Endowment Agreement without the Commissioner's prior written approval, in the Commissioner's reasonable discretion. Any amendment to the Endowment agreement in violation of this 8.A is void.

- B. Successors and Assigns. The Endowment Agreement benefits CP 2023 and the Barnes and their respective successors and assigns.
- C. Governing Law; Venue. This Endowment Agreement is made in Philadelphia, Pennsylvania. All claims and legal proceedings under or related to this Endowment Agreement are governed by Pennsylvania law, without regard to its choice of law provisions. For all claims and legal proceedings under or related to this Endowment Agreement, CP 2023 and the Barnes consent to the exclusive jurisdiction of the Court of Common Pleas for Philadelphia County, Orphans' Court Division, and its courts of appeal. CP 2023 and the Barnes each waives its right to move to have any claim or legal proceeding under or related to this Endowment Agreement removed to another venue.
- D. Integration Clause. This Endowment Agreement is the final, complete, and exclusive agreement between CP 2023 and the Barnes regarding the Endowment, except that this Endowment Agreement is to be interpreted to comport with the Lease.
- E. Survival. Without affecting any provision of this Endowment Agreement that expressly provides it survives the expiration or termination of this Endowment Agreement, those provisions of this Endowment Agreement which by their nature would reasonably be expected to remain effective after this Endowment Agreement ends survive the expiration or termination of this Endowment Agreement and continue to bind the parties.
- F. Severability. If any one or more of the provisions in this Endowment Agreement is held by final, unappealable court order to be invalid, illegal, or unenforceable in any respect, the affected provision(s) are deemed amended to the least extent necessary to render them enforceable, and the invalidity, illegality or unenforceability does not affect any other provision of this Endowment Agreement.
- G. Counterparts. The parties may execute this Endowment Agreement in one or more counterparts, each of which is an original, and all of which together constitute a single agreement. To facilitate execution of this Endowment Agreement, the parties may execute this Endowment Agreement by electronic means, including electronic signatures through software such as DocuSign, or by exchanging PDF

copies of signed signature pages, in each case promptly followed by exchanging hard copy signature pages.

AS EVIDENCE OF THEIR AGREEMENT TO THE PROVISIONS SET FORTH ABOVE, CP 2023 and Barnes have caused their duly authorized representatives to execute and deliver this Endowment Agreement on the date set forth in the preamble.

[Signature lines]

EXHIBIT K

TO

LEASE

BETWEEN

CITY OF PHILADELPHIA

AND

CP 2023

ECONOMIC OPPORTUNITY PLAN

LEASE REFERENCE:

DEFINITIONS: ECONOMIC OPPORTUNITY PLAN

SECTION 5.6.1

EXHIBIT
to
Lease between the City of Philadelphia and CP2023

**City of Philadelphia
Economic Opportunity Plan
Calder Philadelphia Project**

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I. Introduction and Definitions

The City of Philadelphia strongly encourages the use of certified Minority ("MBE"), Women ("WBE"), Disabled ("DSBE") including Disadvantaged¹ ("DBEs") Business Enterprises (collectively, "M/W/DSBEs") and minority and female workers in all aspects of the development to be known as The Calder Philadelphia Project (the "Project") located on the Parkway at SOUTHERN SIDE OF BENJAMIN FRANKLIN PARKWAY BETWEEN THE VINE STREET EXPRESSWAY, 21ST STREET, AND WINTER STREET, IN PHILADELPHIA, PENNSYLVANIA (the "Site") which may include financial investment, design, construction, alteration, repair, maintenance and operation of the improvements. In support of this objective, the City of Philadelphia will require that CP2023, the owner of the Project, (the "Owner") commit to this Economic Opportunity Plan ("EOP" or "Plan"). This Plan contains ranges of projected M/W/DSBE utilization and goals for the employment of minority and female workers in connection with the Project at the Site. This Plan shall be a part of and incorporated into the resulting agreement(s) with the owner of the **Calder Philadelphia Project. This EOP will be incorporated into the Lease between the City of Philadelphia and CP2023 for this Project ("Lease") as an Exhibit.**

The Owner hereby verifies that all information submitted to the Office of Economic Opportunity ("OEO") in response to this Plan, is true and correct and acknowledges that the submission of false information is subject to the penalties of 18 PA C. S. Section 4904, relating to unsworn falsification to authorities and 18 PAC. S. Section 4107.2 (a)(4), relating to fraud in connection with minority business enterprises or women's business enterprises.

For the purposes of this Plan, MBE, WBE, DBE and DSBE shall refer to certified businesses so recognized by OEO. Only the work or supply effort of firms that are certified as M/W/DSBEs by an "OEO approved certifying agency" will be eligible to receive credit as a Best and Good Faith Effort. In order to be counted, certified firms must successfully complete and submit to the OEO an application to be included in the OEO Registry which is a list of registered M/W/DSBEs maintained by the OEO and available online at www.phila.gov/oeo/directory.

For this Plan, the term "Best and Good Faith Efforts," the sufficiency of which shall be in the sole determination of the City, means: efforts, the scope, intensity and appropriateness of which are designed and performed to foster meaningful and representative opportunities for participation by M/W/DSBEs and an appropriately diverse workforce and to achieve the objectives herein stated. Best and Good Faith Efforts are rebuttably presumed met when commitments are made within the M/W/DSBE participation ranges established for the improvements and a commitment is made to employ a diverse workforce as enumerated herein.

II. Project Scope

The Calder Philadelphia Project is a result of the creation of a newly established entity, CP 2023, a collaboration between The Barnes Foundation and The Calder Foundation. CP 2023 will oversee the design and construction of a new building to display the works of the artist Alexander Calder in Philadelphia, PA. The project site is located at 2100 Benjamin Franklin Parkway between 21st and 22nd Streets, directly across

from The Barnes Foundation. The southern edge of the site is bounded by a westbound off-ramp of the VineStreet Expressway. The building will be sited to allow for large open spaces and gardens on the Benjamin Franklin Parkway (northern) side of the site. The interior will be approximately 16,000 SF, a large portion of the building below grade, and will display the works of Alexander Calder. The art will periodically rotate and also may include works of other artists in the space.

III. Goals

A. M/W/DSBE Participation Ranges.

As a benchmark for the expression of "Best and Good Faith Efforts" to provide meaningful and representative opportunities for M/W/DSBEs in the Project, the following participation ranges have been established by Owner. These participation ranges represent, in the absence of discrimination in the solicitation and selection of M/W/DSBEs, the percentage of MBE, WBE and DSBE participation that is reasonably attainable through the exercise of Best and Good Faith Efforts. These percentages relate to the good faith estimated cost of the entire Project, \$40 Million; "Professional Services" excludes Architectural Design of the Calder Philadelphia Project leaving an estimated budget of \$1,246,700 to which the Professional Services goals apply. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g., MBE and WBE and DSBE or WBE and DSBE) will only be credited toward one participation range as either an MBE or WBE or DSBE. The ranges are based upon an analysis of factors such as the size and scope of the improvements and the availability of MBEs, WBEs, and DSBEs to participate in this Project.

The following contract goals have been set for the Project:

Contracts	Minority Owned	Female Owned	Total
Professional Services	10-15%	5-10%	15-20%
Construction	25-30%	5-10%	30-40%

B. Employment Goals.

The owner agrees to exhaust Best and Good Faith Efforts to employ minority persons and females in its workforce of apprentices and journeymen at the following levels³:

- African American Journeypersons – 22% of all journey hours worked across all trades
- Asian Journeypersons – 3% of all journey hours worked across all trades
- Hispanic Journeypersons – 15% of all journey hours worked across all trades

Female Journeypersons – 5% of all journey hours worked across all trades

Minority Apprentices – 50% of all hours worked by all apprentices

Female Apprentices – 5% of all hours worked by all apprentices

Local Residents⁴

32%

³ These goals are informed by the City of Philadelphia Fiscal Year 2020 Annual Disparity Study, Workforce Disparity Assessment. Owner and its Participants are responsible for maintaining records that demonstrate an appropriately diverse workforce for this Project which may include customary hourly wage records.

⁴ Local workforce includes workers living within a 10 mile radius of the Project but will focus on a workforce that lives within Philadelphia.

IV. Equity Ownership

"Economic Opportunity Plans," require that each Economic Opportunity Plan include information concerning the Equity Ownership (as defined) of (1) the contractor, developer and/or recipient of financial assistance required to submit the Plan; (2) participants (as defined) engaged by the contractor, developer and/or recipient of financial assistance; and (3) the eventual owner or owners of the project or contract to which the Plan relates; and requiring periodic reports for the purpose of updating Equity Ownership information; all under certain terms and conditions.

Following the completion of the project, the project owner is responsible for meeting the reporting guideline identified in the Philadelphia Code.⁵

V. Diversity Practices

- I. Owner is required to submit a statement summarizing current and past practices relating to its diversity practices ("Diversity Practices Statement"). This statement shall identify and describe examples of processes used to develop diversity at all levels of Owner's organization including, but not limited to, board and managerial positions. This Diversity Practices Statement should also summarize Owner's strategic business plans specific to its current or past practices of M/W/DSBE utilization on its government and non-government projects and procurement activities. The Statement shall specifically identify, for the last three years preceding the execution of this EOP (or such greater period of time as may have been set forth in the record retention requirement of an applicable EOP), all Owner's "related corporate entities." "Related corporate entities" shall mean any business entity controlled by a person or business with a majority interest in the Owner's business. For these identified contracts containing an EOP, Owner shall

enumerate the levels of M/W/DSBE participation and diverse workforce attainment achieved, comparing Owner’s achievement to the participation ranges and workforce goals contained in each identified EOP. Attachment “A” to this Plan is provided for this purpose.

II. Provide the race, gender, and residential (local) status of your:

A. Directors	CP2023's Board of Directors consists of five men, one of which is minority and four women, one of which is minority
B. Management	<p>CP 2023 is managed pursuant to a services agreement with the Barnes Foundation. The Calder Philadelphia Project will be staffed by the Barnes Foundation pursuant to a Collaboration Agreement. The Barnes Foundation's statistics are as follows:</p> <ul style="list-style-type: none"> • The Barnes Foundation management is 76% white and 24% minority (76% women and 24% male). 49% are Philadelphian's

⁵ Philadelphia Code 17-1603. For this Project there is no Diverse Equity Ownership.

C. General Workforce	<p>CP 2023 does not have any employees. The Barnes Foundation's general workforce (excluding management) is 63% white and 37% racial minorities; it is 71% female, 28% male & 1% non-binary; and 64% Philadelphia residents and 36% non-residents. In addition, 6% of the total workforce has requested accommodations for disabilities.</p> <p>The Barnes uses job boards and networking within the cultural sector to recruit and hire a diverse workforce, along with internal structures to facilitate internal advancement for front line and early career staff to prepare staff for internal and external promotion within the cultural sector.</p>
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3. Identify your organization's methods of solicitation and utilization of Minority, Woman and Disabled Businesses (M/W/DSBEs). Please be specific in describing outreach and any procurement policies that are focused on creating or sustaining business relationships with M/W/DSBEs.

CP 2023 has contracted directly with LF Driscoll (LDF) as the Construction Manager for both preconstruction and construction services. LFD has teamed with BFW Group who will be integrated throughout the project. The LFD/BFW Partnership has a solid track record of achieving results in regards to diversity and the promotion of M/W/DSBEs in the Philadelphia Marketplace. Baker & Company, LLC will work with Driscoll to implement a program to meet the goals. The Contractors will develop meaningful programs before award to assure M/W/DSBE participation is provided by firms that are qualified as certified and provide a commercially useful function. Each month during construction, contract holders will submit an affidavit confirming the value of participation for each M/W/DSBE and their percentage of work complete will be compared with their commitments. Driscoll will utilize good faith efforts in attracting a diverse workforce.

4. What percentage of your company's total spend with vendors and suppliers is attributable to M/W/DSBEs? Please include a list of the largest M/W/DSBEs used by your organization in the last 12 months.

A. Identify the type of goods or services purchased.	We purchase services relevant to our construction projects.
B. Amount of the contract	\$144,200

C. Indicate if any of these M/W/DSBEs are listed in the City of Philadelphia's Office of Economic Opportunity Registry.	Yes.
D. Are these companies certified as M/W/DSBEs? Do You rely on any particular certifying agency?	We utilize firms that are certified by agencies recognized by OEO.
E. If there is no previous M/W/DSBE utilization, the Plan shall contain a statement that explains the reason for the lack of M/W/DSBE participation in past contract(s) or project(s).	N/A

VI. Responsiveness

A. The Owner shall identify all M/W/DSBE commitments evidencing its intent to use Best and Good Faith efforts to contract with M/W/DSBEs and employ minority persons and females at the levels stated herein on the form entitled "M/W/DSBE Participation and Workforce Commitments." The identified commitments on this form constitute a representation that the M/W/DSBE is capable of providing commercially useful goods or services relevant to the commitments and that the Owner has entered into legally binding commitments or other legally binding agreements with the listed M/W/DSBEs for the work or supply effort described and the dollar/percentage amounts set forth on the form. In calculating the percentage of M/W/DSBE participation, the standard mathematical rules apply in rounding off numbers. In the event of inconsistency between the dollar and percentage amounts listed on the form, the percentage will govern.

B. M/W/DSBE commitments are to be memorialized in a written subcontract agreement. Letters of intent, quotations, contracts, subcontracts and any other documents evidencing commitments with M/W/DSBEs, including the M/W/DSBE Participation and Workforce Commitments Form, become part of this Exhibit "L" to the Lease.

C. OEO will review the owner's commitments for the purpose of determining whether Best and Good Faith Efforts have been made. OEO reserves the right to request further documentation and/or clarifying information at any time during the construction, development and operation of the Project.

VII. Compliance and Monitoring of Best and Good Faith Efforts.

A. The Owner agrees to cooperate with OEO in its compliance monitoring efforts, and to submit, upon the request of OEO, documentation relative to its implementation of the Plan, including the items described below:

- Copies of signed contracts and purchase orders with M/W/DSBE subcontractors
- Evidence of payments (cancelled checks, invoices, etc.) to subcontractors and suppliers to verify participation; and

- Telephone logs and correspondence relating to M/W/DSBE commitments.

B. To the extent required by law, the Owner shall ensure that its on-site contractors maintain certified payrolls which include a breakout of hours worked by minority and female apprentices and journeypersons. These documents are subject to inspection by OEO.

C. Prompt Payment of M/W/DSBEs.

The Owner agrees and shall cause its contractors to ensure that M/W/DSBEs participating on the Project receive prompt payment for their work or supply effort within five (5) days after receipt of payment from the Owner or Owner's contractor(s).

D. Oversight Committee.

For this Project, in the sole discretion of the City, an oversight committee may be established consisting of representatives from the Owner, representatives of the building trades, the construction manager, the City which may include the Project site's district councilperson, OEO, and appropriate community organizations ("Committee"). The Committee will meet regularly to provide advice for the purpose of facilitating compliance with the Plan.

E. Reporting.

The owner agrees to file an annual report with the City of Philadelphia and City Council concerning the performance of the Economic Opportunity Plan through the duration of the Project. In addition, during construction, the Owner will provide "snapshot" reports containing updates for certain categories of information contained in its annual report on a monthly basis during construction. Snapshot reporting will include: (i) utilization of M/W/DSBEs, and (ii) the hiring and employment of minorities and females. All reports (quarterly & annually) provided to the City under this section will also be provided to the Office of Economic Opportunity.

VIII. Remedies and Penalties for Non-Compliance.

A. The owner agrees that its compliance with the requirements of this Plan is a material requirement of Section 5.6 of the Lease. Failure to comply with the Plan may constitute substantial breach of Section 5.6 and is subject to the remedies and penalties contained therein or otherwise available at law or in equity. Notwithstanding the foregoing, no privity of contract exists between the City and any M/W/DSBE identified in any contract resulting from implementation of the Plan. Neither the Owner nor the City intends to give or confer upon any such M/W/DSBE any legal rights or remedies in connection with subcontracted services under any law or policy or by any reason of any contract resulting from implementation of the Plan except such rights or remedies that the M/W/DSBE may seek

as a private cause of action under any legally binding contract to which it may be a party.



For CP 2023

Date March 24, 2022

This EOP has been reviewed by OEO Specialists for compliance with 17-1600 of the Philadelphia Code and is certified as responsive.

[See Forms on following pages; these Forms, must be submitted by Contractor]

6 The Owner's Representative is required to sign and date but the City reserves the right to obtain the Owner's Representative signature thereon at any time prior to Plan certification. The Owner Representative will receive from the City a certified copy of the Plan which should be filed with the Chief Clerk of City Council within fifteen (15) days of the issuance and published by OEO, in a downloadable format on the OEO website.

8 Pursuant to Section 17-1603 (2) of The Philadelphia Code, the representative of the City of Philadelphia's Office of Economic Opportunity, the "certifying agency," certifies that the contents of the Plan are in compliance with Chapter 17-1600.

Attachment A

The Barnes' Diversity Practices

The Barnes Foundation strives to mirror the diversity of the Philadelphia regional population in its exhibitions, education offerings, public programs, and audiences. The Barnes actively seeks to build a diverse Board, staff, and stakeholder community, recognizing that an ongoing commitment to diversity and inclusion is integral to its excellence and success.

Core Beliefs

Our founder, Dr. Albert C. Barnes, understood that art had the power to improve minds and transform lives. In accordance with his vision and values, the Barnes Foundation believes that:

- All people are capable of learning to appreciate and enjoy art and doing so can be a life-transforming experience.
- Engaging with art is not an esoteric activity, but one that has practical application to personal and intellectual development.
- Art has a meaningful role to play in the service of improving society.
- Diversity and inclusion are necessary parts of all our activities.
- Our material assets must be preserved according to the highest possible standards so they may be enjoyed by the generations to come.

Our Commitments to Diversity, Equity, Accessibility, and Inclusion

The Barnes Foundation's commitment to accessible education and to diversity, inclusion, and social justice is central to our mission: to promote the advancement of education and the appreciation of the fine arts and horticulture. In recent years, the Barnes has worked to fulfill the aspirations of Dr. Barnes by bringing the transformative power of art into our local communities and creating programs to welcome diverse audiences to visit our galleries.

To realize the Barnes's commitment to accessible education and to diversity, inclusion, and social justice, we have expanded relationships with our vibrant network of local partners—including the School District of Philadelphia, the Free Library of Philadelphia, People's Emergency Center, Philadelphia Parks & Recreation, and Puentes de Salud—and collaborated on creative initiatives both on-site and in the neighborhoods we serve.

Our special exhibitions reflect our mission in a variety of ways. Some engage with the art and artists represented in our galleries while others, to place those works in context, feature artists of Dr. Barnes's time that he overlooked. Many of our exhibitions honor Dr. Barnes's commitment to racial equality and social justice, celebrating artists who are Black, indigenous, people of color, women, and those who did not have access to formal art education.

Recent exhibitions include *Suzanne Valadon: Model, Painter, Rebel*, spotlighting the controversial artist who broke new ground with her unapologetic portraits and nudes; *Elijah Pierce's America*, celebrating the remarkable work of the self-taught woodcarver (2020); *Berthe Morisot: Woman Impressionist* (2018), a landmark exhibition

dedicated to the only woman who exhibited in every one of the impressionist exhibitions; and *Mohamed Bourouissa: Urban Riders* (2017), in which the artist explored a North Philadelphia community's efforts at neighborhood revitalization and youth empowerment.

Our Commitment to Building a Diverse Board, Staff, and Volunteer Groups

The Barnes actively seeks to build a diverse Board, staff, volunteer, and stakeholder community, recognizing that an ongoing commitment to diversity and inclusion is integral to its excellence and success. Barnes staff demographics are 66% white, 23% Black/African American, 5% multiracial; 4% Latinx; 1% Asian, and 1% American Indian. Seventy percent of our staff identify as female, 29% as male, and 1% as non-binary. The Barnes is governed by a 15-member Board of Trustees who identify as 64% white, 29% Black/African American, and 7% Latinx. Forty percent of our Trustees identify as female as 60% as male.

Barnes leadership and senior staff have committed to promoting and retaining staff, as well as developing the institution's workforce to reflect the demographics of the city of Philadelphia's workforce. The Barnes recently reorganized its Human Resources department to better meet its longstanding commitment to diversity, equity, and inclusion. In August 2020, Sheronda Whitaker was promoted to the newly created role of Chief Human Resources and Diversity Officer to collaborate with departments across the institution to ensure the Barnes provides a welcoming, supportive, and inclusive workplace for all staff and volunteers. A new standard operating procedure was introduced for all hiring of staff in 2019 to ensure equitable, consistent, legal, inclusive, effective hiring practices, including uniform questions to all candidates and cross-departmental hiring panels to gain a variety of perspectives on candidates. Human Resources' efforts thus far have resulted in highly qualified minority candidates applying to more than 90% of completed job searches during 2021.

In July 2021, in support of a livable wage in the Philadelphia metro area, the Barnes instituted salary increases for all of its staff. The Barnes became the first cultural organization in the region to move to a minimum wage of \$15.00/hour. Frontline staff positions received raises of \$2 per hour and all additional staff who had not been hired or received a promotion in 2021 due to the pandemic received salary increases based on the date of their last increase and their performance as evaluated by their manager.

A Pathways Program was created to strengthen processes for internal promotion, including implementing career ladders for promotion within the front-line Guest and Protection Services department; in 2021, 15 promotions have been awarded. Pathways internships were introduced this fall, aimed at delivering growth experiences and deepening skill sets to encourage professional development and advancement, as well as providing a baseline understanding of the operations in other departments. Structured with a job description, application process, mentor, and on-boarding/review procedures, two internships are

currently taking place in the Pre-K–12 Education and Marketing Departments, with 12 additional internships offered over the next year.

The Barnes demonstrated its investment to enhancing organizational culture and created the Culture Action Team (CAT) in response to a 2019 cultural assessment of the organization executed with Denison Consulting. This team continues to meet to execute initiatives that positively impact the Barnes's organizational culture. The group comprises 18 individuals who are full-time or part-time staff and volunteers, are at varying staff and management levels, have short and long tenures within the institution, and who represent diverse racial and gender identities.

EXHIBIT L

TO

LEASE

BETWEEN

CITY OF PHILADELPHIA

AND

CP 2023

PUBLIC ACCESS PLAN

LEASE REFERENCE:

DEFINITIONS: PUBLIC ACCESS PLAN

SECTION 5.7.1

CP 2023
Public Access Plan
For the Calder Philadelphia Facility

The Calder Philadelphia facility will participate in certain current programs of the Barnes Foundation to ensure affordable access to its programs and art installations, in addition there is an expectation to create specific programs for Calder Philadelphia that will be similar to certain programs of the Barnes Foundation, as described herein.

Free Access to Philadelphia School Students, ACCESS Card Holders and Community Passes:

Philadelphia high school students with valid student ID will be able to visit the Calder Philadelphia facility, exhibitions, and programs for free through STAMP (Students in Museums in Philly), an Art-Reach initiative, as they are able to do at the Barnes Foundation.

ACCESS cardholders will receive free admission simply by showing their card.

While admission prices have not yet been set for the Calder Philadelphia facility, discounted admissions for children, youth, and college students will be established similar to the tiered system at the Barnes Foundation, which is currently: free admission for all children 12 and under, and a reduced admission charge of \$5 for youths aged 13-18 as well as all college students.

The Art for All Community Pass aims to deepen relationships with participants in specific access programs and build sustainable art experiences for members of our community for whom cost and other factors may make visiting the Barnes or the Calder Philadelphia facility prohibitive. The pass will give the holder and three guests free admission to both the Barnes and the Calder Philadelphia facility for a year, and special discounts on dining and shopping. Art for All Community Passes are provided to participants in our community engagement and family programs, participants in school partnerships, and adult education scholarship recipients, as well as families of pre-K students in our programs, and ACCESS cardholders. (ACCESS cardholders also continue to receive free admission simply by showing their card.)

Community Engagement and Free Visits:

In addition to its programs based in West Philadelphia (Barnes West) and in South Philadelphia (a collaboration with Puentes de Salud, called Puentes alle Artes), the Barnes has engaged new audiences through innovative digital platforms that have the potential to transform the museum field, such as the development of virtual reality (VR) headsets in 2018, allowing individuals to virtually explore our galleries and enabling our educators to lead tours of the collection. In partnership with the Free Library of Philadelphia, headsets were brought to local libraries by our educators, and visitors could see and learn about the collection in their own neighborhood. We saw over 1,800 participants in 2019 at 62 neighborhood sites throughout Philadelphia, including public libraries, senior centers, recreation centers, and cultural partner organizations. The program has allowed us to go beyond our walls and directly into the communities we serve, and the headsets are an effective way to stimulate curiosity, social engagement, and personal connections with art. In

working with various community partners, the Barnes has been effective in reaching marginalized audiences, such as senior citizens, mobility-impaired audiences, and homeless populations.

This program has further initiated connections to authentic experiences with art through free transportation to the Barnes and guided galleries tours. Though this program was temporarily suspended due to the pandemic, we will resume it in 2022.

At a minimum, we will provide access to the Calder Philadelphia facility and programs to these groups too, although we also expect to create specific programs around the offerings at Calder Philadelphia.

Free Day:

We will have a dedicated day each month with free admission to the Calder Philadelphia facility, exhibitions and programs. This day may be the same as the Barnes’s free public access day – the first Sunday of each month – or it may be a different day.

At the Barnes, PECO Free First Sunday Family Day, is a monthly event offering free access to the Barnes collection and special exhibitions, along with a robust slate of performances and activities designed to engage audiences who might not otherwise have the opportunity to visit. In 2019, our PECO Free First Sunday Family Day events saw 24,500 visitors—38% non-white, 72% below age 45, and 29% with household income less than \$56,000/year.