

# City of Philadelphia



(Bill No. 070077)

## AN ORDINANCE

Authorizing the President of the Fairmount Park Commission and the Executive Director of Fairmount Park to enter into a lease agreement between the City of Philadelphia as landlord and the Center City District as tenant for a certain parcel of land bounded by 16th Street, the Benjamin Franklin Parkway and Cherry Street, commonly referred to as Three Parkway Plaza, under certain terms and conditions.

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

**SECTION 1.** The President of the Fairmount Park Commission and the Executive Director of Fairmount Park are hereby authorized to enter into a lease agreement between the Fairmount Park Commission as landlord and the Center City District as tenant for a certain parcel of land bounded by 16th Street, the Benjamin Franklin Parkway and Cherry Street, commonly referred to as Three Parkway Plaza, which Lease shall be substantially in the form set forth in Exhibit "1" attached hereto, with such changes as the City Solicitor deems necessary or appropriate to protect the interests of the City.

# City of Philadelphia

BILL NO. 070077 continued

Certified Copy

## EXHIBIT "1"

## FIRST AMENDED AND RESTATED LEASE AGREEMENT

This Lease Agreement (“**Lease**”) is made this        day of       , 2007, by and between THE CITY OF PHILADELPHIA, acting through the FAIRMOUNT PARK COMMISSION (“**Park**,” “**Landlord**,” or “**City**”) and CENTER CITY DISTRICT, a body corporate and politic existing under the laws of the Commonwealth of Pennsylvania (“**CCD**” or “**Tenant**”).

### Background

**A.** The Fairmount Park Commission is charged with the jurisdiction and care of a certain triangular-shaped park commonly called 3 Parkway Plaza (“**Premises**”). The Premises are located between 16<sup>th</sup> and 17<sup>th</sup> Streets, north of Benjamin Franklin Parkway and south of the most southerly side of Cherry Street, in the City of Philadelphia, and are more particularly described in **Exhibit A**, which is attached to and made part of this Lease.

**B.** CCD is a special services district formed under the Commonwealth of Pennsylvania’s Municipal Authorities Act to provide security, cleaning, promotion, and capital improvement services that supplement but do not replace, both basic services provided by the City of Philadelphia and the responsibilities of property owners located in the district.

**C.** CCD has entered into the Development Agreement, attached hereto as **Exhibit B** (the “**Development Agreement**”) in order to provide proper maintenance to the Premises to better serve the tenants of the 1601 Cherry Street and the citizens of Philadelphia.

**D.** CCD has performed or caused performance of improvements to and alterations of the Premises in strict accordance with schematic plans approved by a Resolution of the Fairmount Park Commission (“**Phase 1 Improvements**”), and the Premises and such improvements shall continue to be maintained, managed and operated by CCD in accordance with the Development Plan (“**Phase 1 Maintenance**”) and all Premises improvement plans approved by the Park so that the Premises may be actively used for public enjoyment (“Phase 1 Improvements” and “Phase 1 Maintenance” are collectively referred to herein as “**Phase 1 Plans**”).

**E.** CCD has submitted to the Fairmount Park Commission, a Phase 2 Plan (attached hereto as **Exhibit D**), covering future Improvements (defined below) on the Premises to permit an operator of a food and tourist service, and/or other retail facility, to use the Improvements for such activities and provide maintenance to the Improvements related to such activities; provided that such activities shall not unreasonably interfere with use of the Premises by the general public. (“**Phase 2 Plans**”).

**F.** This First Amended and Restated Lease shall commence only upon enactment of an Ordinance of City Council authorizing a 10-year lease between the City and the CCD for the Premises and final approval of Phase 2 Plans by Resolution of the Fairmount Park Commission.

NOW THEREFORE, in consideration of the mutual covenants of Park and CCD, and for other good and valuable consideration the receipt of which is acknowledged, Park and CCD, intending to be legally bound, agree as follows:

**ARTICLE 1**  
**BACKGROUND; PREMISES**

**1.01** The Background is hereby incorporated by reference.

**1.02** Commencing as of the Commencement Date (as defined in Section 3.01), Park leases to Tenant and Tenant leases from Park the Premises, subject to the terms and conditions of this Lease.

**1.03** At all times during the Term (as defined below), the Premises shall be and remain owned by and titled in the City of Philadelphia. No legal title or easement shall be deemed to be created or vested in Tenant by anything contained in this Lease.

**1.04 (a)** Tenant accepts the Premises, including all improvements on the Premises, in their “AS IS” condition, including without limitation:

- i. the zoning applicable to the Premises,
- ii. any surface and subsurface conditions of the Premises,
- iii. all latent and patent defects and hazards.

**(b)** Tenant accepts the Premises without representation, covenant or warranty, express or implied, in fact or in law, by Landlord. Tenant agrees that it shall have no recourse to Landlord as to the title to the Premises, encumbrances, restrictions and conditions in, on, or about the Premises, the nature, condition or usability of the Premises, or the use or uses to which the Premises or any part of the Premises may be put. Tenant is leasing the Premises without reliance on any information which may have been obtained from Landlord.

**(c)** Without in any way limiting this Section 1.03, Landlord makes no representation or warranty regarding compliance by the Premises with any Applicable Law (as defined in Article 20 below), including but not limited to compliance with laws regulating hazardous substances and that law commonly known as the Americans With Disabilities Act of 1990, P.L. Sections 101-336, codified generally at 42 U.S.C. §§ 12101 *et. seq.*, and all rules, regulations and guidelines promulgated pursuant to that law (“**ADA**”), as any or all of the foregoing may be amended from time to time.

**(d)** Landlord shall provide the limited City services set forth in Exhibit “C” (the “**Limited City Services**”), at the Landlord’s sole cost and expense. Other than providing the Limited City Services, Landlord shall have no obligation whatsoever to maintain, repair or operate the Premises or any part of the Premises, and any and all such maintenance and repair required by Tenant shall be performed by or caused to be performed by Tenant at Tenant’s sole cost and expense in accordance with and to the extent required by the terms of this Lease.

**(e)** Except for Landlord’s obligation to provide Limited City Services set forth in Section 1.04(d) above, this Lease does not impose any obligation of the City to appropriate or spend money at any time, or for any matter of cause, arising from or related to this Lease.

**1.05** Landlord shall not in any event be liable for any injury or damage to any property or to any person occurring in, on, or about the Premises and its appurtenances, nor to any property, whether belonging to Tenant or any other person, caused by any fire, breakage, leakage, defect or bad condition in any part of the Premises, or from water, rain or snow that may leak into, issue or flow from any part of the Premises, from the drains, pipes, or plumbing work of the same, or from any place or quarter, or due to the use, misuse or abuse of all or any of the hatches, openings, installations of any kind whatsoever which may now or hereafter be erected or constructed in or on the Premises, or from any kind of injury which may arise from any other condition whatsoever existing on the Premises throughout the Term (as defined in Section 3.01).

**ARTICLE 2**  
**USE; CONDITIONS PRECEDENT TO LEASE TERM; PROHIBITED USE**

**2.01** Tenant shall occupy and use the Premises, or shall cause the Premises to be occupied and used for the following purposes only:

(a) Phase 2 Plan activities- CCD shall submit Phase 2 Plans, which include plans for future Improvements (defined below) to the Premises and a Phase 2 maintenance plan which includes obligations of licensee for clean up and trash removal related to Phase 2 Plan activities. Any improvements to be constructed pursuant to the Phase 2 Plans are referred to as the “**Phase 2 Work.**” All Phase 2 Work must be approved in advance by a Resolution of the Fairmount Park Commission.

(b) performing or causing the continued performance of Phase 1 Maintenance including managing, operating and maintaining the improvements and the Premises for open space, pedestrian and public use in strict accordance with such written procedures and guidelines as may be promulgated from time to time by the Park.

**2.02** Tenant shall not perform or allow the performance of any improvements to or alterations of the Premises unless and until Tenant, has obtained all necessary permits, certifications, and licenses for such improvements to or alterations of the Premises as contemplated by this Lease and as otherwise required by Applicable Law (as defined in Article 20).

**2.03** Tenant shall not sell, distribute or permit the presence in, on, or about the Premises of any liquor or malt or brewed beverages as defined in the Pennsylvania Liquor Code, currently codified at 47 P.S. §§ 1-101 et seq. without first obtaining Landlord’s prior written approval, which approval may be withheld for any reason or no reason.

**2.04** Tenant shall not use the Premises or permit any Permitted Licensees (as defined in Section 9.3), employees, agents or contractors the use of the Premises in violation of any Applicable Law or in violation of this Lease. Tenant shall not cause any act to be done or any condition to exist in, on, or about the Premises or any part of the Premises or any article to be brought onto the Premises which may be dangerous or which may, in law, constitute a nuisance,

public or private, or which may make void or voidable any insurance then in force with respect to the Premises or any part of the Premises.

**2.05** Tenant shall not permit the Premises or any part of the Premises to be used in any manner as might tend to impair the City's title to any or all of the Premises, or in such manner as might make possible a claim or claims of adverse usage or adverse possession by the public or of implied dedication of any or all of the Premises.

**2.06** Tenant may permit commercial activities on the Premises, provided that such commercial activities and the proposed entities or persons owning and/or operating such activities are approved in advance in writing by the City.

**2.07** Tenant acknowledges that it has received and reviewed a copy of the Rules and Regulations of Fairmount Park. Without limiting the definition of Applicable Law under Article 20, Tenant shall occupy, use, and operate the Premises in compliance with the Rules and Regulations of Fairmount Park as now enacted and as they may be amended from time to time.

**2.08** Subject to 1.04(d), Tenant shall provide or contract for all services and equipment necessary and desirable to safely occupy, use, and operate the Premises and fulfill its obligations under this Lease.

**2.09** Tenant shall not impose or charge any fees to persons licensing use of some or all of the Premises from Tenant except as explicitly approved in advance by the Park in writing.

### **ARTICLE 3** **TERM; RENEWAL**

**3.01** The initial term of this Lease shall commence upon: 1) approval by the Philadelphia City Council (the "**Council**") by an Ordinance (the "**Ordinance**") duly adopted by the Council and approved by the Mayor of the City of Philadelphia of a ten (10) year lease between the City and the CCD for lease of the Premises to CCD pursuant to the terms of this Lease (the "**Council Approval**"); and, 2) the Fairmount Park Commission's final approval by Resolution of Phase 2 Plans (the "**Park Approval**") (the date by which both Council Approval and Park Approval is obtained is referred to herein as the "**Approval Date**"), and shall terminate one (1) day prior to the ten (10) year anniversary of the Approval Date (the "**Termination Date**"). Such period between the Approval Date and the Termination Date shall be referred to hereafter as the "**Initial Term**". Landlord agrees to renew the term of this Lease, for a period not to exceed ten (10) years from the Termination Date (the "**Renewal Term**"), to be coterminous with any Permitted License which has been approved by Landlord pursuant to Section 9.03 and which exceeds the Initial Term of this Lease. The Initial Term and the Renewal Term are collectively referred to herein as the "**Term**".

**3.02** In the event that a Permitted Licensee(s) (defined below in Section 9.03) ceases to operate on the Premises for a period of five (5) months and Landlord determines in its reasonable discretion that CCD is not making commercially reasonable efforts to relicense the

Premises, the City shall have the right to terminate this Lease upon thirty (30) days written notice to CCD.

**SECTION 4**  
**RENT**

**4.01** The rent for the Premises shall be One Dollar (\$1.00) per year (“**Rent**”) payable on each anniversary of the Commencement Date during the Term.

**4.02** Tenant agrees to promptly pay, or cause to be promptly paid, as additional rent (“**Additional Rent**”), without demand and without set-off,

(i) any and all sums which become due as specified in this Lease or by reason of any default of Tenant or failure on Tenant’s part to comply with the terms of this Lease;

(ii) and any and all damages, costs, and expenses which Landlord may suffer or incur by reason of any default of Tenant or failure on Tenant’s part to comply with the terms of this Lease;

(iii) any and all damages to the Premises caused by any act, omission, or negligence of Tenant, its officers, employees, agents, contractors, subcontractors, licensees, or other occupants of the Premises;

(iv) any and all sums which Tenant may be required to pay to Landlord or any utility provider or any other third party under any other provision(s) of this Lease; and

(v) any and all taxes, assessments and other governmental charges, general or special, ordinary or extraordinary, of any kind and nature whatsoever (including all penalties and interest thereon) which, at any time on and after the Commencement Date and during the remainder of the Term, may be assessed, levied, imposed upon, or become due and payable in respect of, the Premises or any part thereof, or any use or occupation of the Premises.

**ARTICLE 5**  
**IMPROVEMENTS AND ALTERATIONS**

**5.01** In this Lease, all existing and future improvements, whether permanent or temporary, and including any facility constructed by CCD for the café/tourism services in accordance with the Phase 2 Plans (the “**Café Structure**”), and/or mobile facilities which may be used on the Premises from time to time in accordance with the terms herein, in, on, and about the Premises, shall be called the “**Improvements.**” In addition, unless otherwise specified, all references to the Premises shall include the Improvements. Separate references to the Premises and Improvements shall not be deemed to exclude the Improvement from the Premises wherever the term “Premises” is used by itself.

**5.02** Except as explicitly provided in this Lease, Tenant or any Permitted Licensee (defined below in Section 9.03) shall not make, permit or construct any Improvements, renovations, replacements, additions and/or alterations, whether permanent or temporary, (“**Alterations**”) upon or otherwise modify or alter the Premises or any of the Improvements in any way not consistent with the Phase 2 Plans without the prior review and written consent of the Park. The Park’s approval of any Alterations may be conditioned upon a requirement that Tenant or any Permitted Licensee provide the Park with a performance and payment bond

satisfactory to the Park in all respects and other requirements deemed necessary or prudent to protect the interests of the Park. The Park shall endeavor to review Tenant's or any Permitted Licensees' request for approval of its proposed Alterations within thirty (30) days of receipt of Tenant's request or ten (10) days after the second Fairmount Park Commission meeting following receipt of Tenant's request, whichever is later. Park's failure to inform Tenant whether Park approves Tenant's request shall not be construed to constitute approval by Park. If the Park does not approve any request, it shall notify Tenant, together with its notice of disapproval and the Park's suggestions for alternatives that it would approve, and the parties shall promptly and cooperatively attempt to agree upon the Alterations.

**5.03** Any Alterations approved by the Landlord shall be made by Tenant or any Permitted Licensee at Tenant's or any Permitted Licensees' sole cost and expense, in a workman-like manner, and in compliance with all Applicable Laws.

**5.04** Upon approval by Landlord, any and all plans and specifications for Alterations shall become part of this Lease as though fully set forth herein, and Tenant or any Permitted Licensees shall diligently cause work to be completed in strict accordance with such documents.

**5.05** Except as expressly provided otherwise by Landlord in any consent or approval required under this Article 5, all Alterations performed on the Premises or any of the Improvements shall, upon completion, become part of the Premises and the property of the Landlord, except that the Café Structure shall be owned by CCD during the term of this lease.

**5.06** Review, approval, and/or consent pursuant to this Lease by the Landlord or any representative of the Landlord of any plans, work or other materials submitted or performed by Tenant or any Permitted Licensees in connection with this Lease shall not constitute any representation, warranty, or guaranty by Landlord as to the quality, substance, or compliance with Applicable Laws of the matter reviewed or approved. At all times Tenant or any Permitted Licensee, as applicable, shall use its own respective independent judgment as to the accuracy and quality of all such matters. Review, approval, and/or consent under this Lease by Landlord or any representative of Landlord shall not constitute or be construed to constitute approval otherwise required under Applicable Laws by any and all departments, boards and commissions of the City of Philadelphia in connection with the Tenant's obligations under this Lease or any Permitted Licensee under any Permitted License agreements.

## **ARTICLE 6** **UTILITIES**

**6.01** Subject to Section 1.04(d), Landlord is not obligated, and shall not be required, to render or pay for any services of any kind to Tenant or the Premises.

## **ARTICLE 7** **MAINTENANCE AND REPAIR OF PREMISES; FIXTURES; SECURITY**

**7.00** In this Lease, the terms “Repairs” and “Repair” shall include all necessary and prudent repairs, replacements, renewals, and alterations, whether ordinary or extraordinary, foreseen or unforeseen, and whether capital in nature or otherwise.

**7.01 (a)** Tenant shall, at its sole cost and expense, maintain, or cause to be maintained, the Premises in good condition and repair and in compliance with all Applicable Laws (as defined in Article 20).

**(b)** Without limiting the foregoing subsection 7.01(a), Tenant shall, at its sole cost and expense, maintain and Repair or cause the maintenance and Repair of all structural and nonstructural parts of the Improvements.

**(c)** All Repairs made or caused to be made by Tenant shall be at least equal in quality to the original item repaired. Prior to making any and all Repairs to the Premises, Tenant shall notify the Landlord in writing of the need for such Repair visible from the outside of the Premises or affecting the structure of any Improvement. In the event of an emergency posing an immediate, bona fide threat of danger to the health or safety of any persons, animals, or property, however, Tenant may perform or cause the performance of all necessary Repairs but shall at its very first opportunity inform Landlord about such Repairs and obtain the City’s prior approval for any additional future Repairs which may be prudent or desirable.

**7.02** Subject to Section 1.04(d), Tenant shall provide the limited Tenant services set forth in **Exhibit C** (the “**Limited Tenant Services**”), at Tenant’s sole cost and expense. Except as set forth in Section 1.04(d), Tenant shall not be responsible for ADA compliance of curbs and sidewalks, and Landlord shall be responsible at its sole cost and expense for such compliance. Tenant shall be responsible for ADA compliance of Improvements.

**7.03** During the Term, Tenant shall promptly Repair (or cause the Repair of) any waste, damage, disfigurement or injury to the Premises, including but not limited to the Improvements caused by Tenant, any and all Permitted Licensees, and their respective officers, employees, agents, representatives, contractors, subcontractors, licensees; provided, however, that Tenant will only be required to use commercially reasonable efforts to maintain the standard set forth above while constructing the Improvements.

**7.04** Landlord shall not be required to furnish any services or facilities (except as otherwise stated in this Lease) or to maintain, Repair, build or rebuild any part of the Premises, including but not limited to the Improvements, and Tenant expressly waives any and all rights to make Repairs to the Premises or any part thereof at the expense of Landlord as may be provided for in any law now in effect or enacted in the future. Tenant assumes full and sole responsibility and liability for the condition, construction, improvement, operation, Repair, replacement, equipping, maintenance, and management of the Premises and the Improvements on the Premises.

**7.05** Nothing contained in this Lease shall be construed in any way as constituting the consent or request of the City, express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific

Alteration, addition, improvement, Repair or other work to the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any lien against the interest of Landlord in the Premises or any part thereof.

**7.06** Tenant shall not install any fixtures in or on the Premises or any of the Improvements without the prior written approval of the Landlord, unless such fixtures are consistent with the Plans. Upon the expiration or earlier termination of this Lease, Tenant shall promptly remove any and all trade fixtures and restore any damage to the Premises or any of the Improvements caused by the installation or removal of any and all trade fixtures and shall return the Premises to Landlord in clean and in good condition, ordinary wear and tear excepted. Neither the Phase I Improvements nor the Improvements made pursuant to the Phase II Plans are trade fixtures for this purpose.

**7.07** Landlord shall not have any obligation to provide security for the Premises, except to the extent described in the Limited City Services. Tenant shall promptly pay or cause to be paid any tax or levy imposed by any governing authority in connection with the maintenance of security and fire alarm and suppression systems on the Premises.

**7.08** Without limiting any other provision of this Lease, Tenant shall not place, erect, hang, or paint any sign in, on, or about the Premises without the prior written approval of the Landlord.

**7.09** Tenant shall be responsible for maintenance of all trees and shrubs growing on the Premises, pursuant to the landscape maintenance provisions of **Exhibit C** (the "**Landscape Maintenance Plan**"). Tenant shall not landscape any part of the Premises nor trim, prune, or remove any trees on the Premises, however, without obtaining the prior written approval of the Fairmount Park Commission's arborist.

**7.10** Landlord may, at its sole option, perform any or all Repairs that may be necessary by reason of Tenant's failure to make any such Repairs, or perform any work on the Premises as Landlord desires. Nothing in this Lease shall create or imply any duty on the part of Landlord to make any such Repairs or do any such work, and performance of any Repairs by Landlord shall not constitute a waiver of any default of Tenant in failing to perform the same. Landlord shall not in any event be liable to Tenant for inconvenience, annoyance, disturbance, or other damage by reason of making such Repairs or on account of bringing materials, supplies and equipment onto the Premises during the course of any Repairs or other work on the Premises. Tenant shall pay to Landlord, upon demand, as Additional Rent, the actual cost of any and all such Repairs performed by Landlord due to Tenant's act, omission, or failure to perform any Repairs or other work required under this Article 7 or this Lease generally.

## **ARTICLE 8** **ENTRY ON PREMISES BY LANDLORD**

**8.01** Landlord shall have the right to enter and traverse the Premises as a member of the public and to enter the Premises at any time as may be necessary or prudent for Landlord to

perform its governmental functions. In addition, Tenant shall permit Landlord, any of Landlord's authorized representatives, and any persons authorized by Landlord, to enter all areas of the Premises, including but not limited to the Improvements, at all times:

(a) inspecting the Premises in order to determine whether Tenant has complied or is complying with the terms and conditions of this Lease;

(b) carrying out any purpose necessary, incidental or connected to the performance of Landlord's obligations or exercise of Landlord's rights under this Lease;

(c) making any Repairs or performing any work on the Premises as provided in Article 7 above.

## **ARTICLE 9** **SPECIAL PROVISIONS AND REQUIREMENTS**

**9.01 Public Use of the Premises:** Tenant acknowledges and understands that the Premises are part of the Fairmount Park system of the City of Philadelphia and as such exist for the enjoyment of the citizens of Philadelphia. Throughout the Term, subject to the terms and conditions of this Lease and to the extent contemplated in any Permitted License (defined below in Section 9.03), Tenant shall maintain and Repair the Premises, keep them in good order and repair and available for the use and enjoyment of the general public, and not interfere with or impede public access to or over the Premises, subject only to any Permitted License granted by Tenant for third parties to use the Premises in accordance with Section 9.03 below.

**9.02** [Intentionally Omitted]

**9.03 Tenant May License the Premises:**

(a) In accordance with the Phase 2 Plan approved by the Fairmount Park Commission and subject to the terms and conditions of this Lease, Tenant may, execute one or more written license(s) ("**Permitted License(s)**") in order to implement the Phase 2 Plan, covering future Improvements on the Premises to permit an operator of a food service, tourism service and/or other retail facility, ("**Permitted Licensee(s)**") to use those Improvements for such activities; provided that such Permitted License(s) shall not unreasonably interfere with use of the Premises by the general public. Prior to Tenant entering into any Permitted License(s) or other agreement, Tenant must provide Landlord with adequate information regarding any proposed Permitted Licensee(s) and their respective related entities, such information required may include, but is not limited to Permitted Licensee(s) audited financial records for the three (3) previous years (if available), related experience, a proposed business plan for five (5) years, proposed menu and/or the list of items which will be sold, and any other information the City deems necessary. Tenant shall obtain Landlord's written approval before any Permitted License or other agreement is executed by Tenant and any proposed Permitted Licensee or before any material change to any Permitted License is accepted by Tenant.

(b) If Tenant or any Permitted Licensee is selling goods which the City has not approved, Tenant will immediately cause Permitted Licensee(s) to immediately cease selling such goods using commercially reasonable efforts, including but not limiting to enforcing all of its right under the Permitted License. Without limiting this Section 9.03(b), Tenant will not permit the sale of cigarettes or other tobacco or tobacco related products on the Premises.

(c) If Tenant executes any Permitted License(s) as contemplated by this Section 9.03, then such License shall be subject to all the terms and conditions of this Lease and to the prior, written approval of the Fairmount Park Commission.

**9.04 License Fees:** Tenant agrees that any and all fees charged to Permitted Licensee(s), however described or characterized in any Permitted License(s), and any fees otherwise collected by Tenant (including reimbursement to Tenant of its equity, if any, contributed in connection with the Improvements), less reasonable reserves and amortization of improvements by Tenant, must be used solely for the purpose of maintaining the Premises and making Repairs, including replacements to the Premises. If, on December 30 of each year during the Term of the Lease, there are funds remaining after paying all expenses to maintain the Premises, less reasonable reserves and amortization of improvements by Tenant (including reimbursement to Tenant of its equity, if any, contributed in connection with the Improvements), Tenant will use such funds for maintenance of Park land and streetscape along the Benjamin Franklin Parkway and shall deposit such funds in an account which the parties mutually agree. CCD shall obtain prior written approval of the Park for any maintenance CCD desires to provide along the Parkway which exceeds the scope of the existing maintenance services CCD currently provides for the Park along the Parkway. Tenant will submit all financial reports in accordance with Article 31.

## **ARTICLE 10** **INDEMNIFICATION OF CITY**

**10.00** In this Lease, the term “City” shall include the City of Philadelphia, its officials, officers, agents, boards, commissions, employees, successors and assigns; the term “Tenant” shall include Tenant and its officers, agents, successors, assigns, subtenants, students, contractors, subcontractors, employees, and licensees.

**10.01** Tenant shall, and shall cause any Permitted Licensee(s) to, 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’ fees and litigation costs), and liabilities, including but not limited to those in connection with loss of life, bodily and personal injury, or damage to property (real or personal, and regardless of ownership), which occur, in whole or in part, as a result of: (a) any act or omission of Tenant; (b) the use, operation, occupancy or maintenance of the Improvements (or any part(s) thereof) by Tenant; (c) the exercise of any right and/or performance of any obligation under or pursuant to this Lease; (d) the condition of the Premises or any part(s) thereof.

**10.02** In case any action or proceeding is brought against the City relating to any matter for which Tenant has indemnified City, Tenant, upon written notice from City, shall at Tenant's sole cost and expense (including without limitation counsel fees and court costs), resist or defend such action or proceeding by counsel approved by the City Solicitor of the City in writing; provided that no approval of counsel shall be required in each and every instance where the claim is resisted or defended by counsel of an insurance carrier obligated to so resist or defend such claim, and provided also that the City may engage at its expense its own counsel to participate in the defense of any such claim. Without limiting the generality of Article 25, the provisions of this Article 10 shall survive the expiration or termination of this Lease.

**ARTICLE 11**  
**INSURANCE; WAIVER OF SUBROGATION**

**11.01** Lessee shall procure and maintain, at its sole cost and expense, and shall require all of its Permitted Licensee(s), contractors, subcontractors, concessionaires and consultants performing work to procure and maintain, insurance covering its employees, invitees and the Premises, in the types and minimum limits of coverage specified below throughout the term of this Agreement. All insurance shall be procured from reputable insurers who are acceptable to the City and authorized to do business in the Commonwealth of Pennsylvania. All insurance herein, shall be written on an "occurrence" basis and not a "claims-made" basis.

- (a) Workers' Compensation and Employers' Liability
  - (i) Workers Compensation – Statutory Limits;
  - (ii) Employers Liability:
    - \$100,000 Each Accident - Bodily Injury by Accident;
    - \$100,000 Each Employee - Bodily Injury by Disease;
    - \$500,000 Policy limit - Bodily Injury by Disease;
- (b) General Liability Insurance
  - (i) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 personal and advertising injury; \$2,000,000 general aggregate and \$2,000,000 aggregate for products and completed operations.
  - (ii) Coverage: Premises operations; blanket contractual liability; personal injury liability (employee exclusion deleted); products and completed operations; independent contractors; employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations) liability.
- (c) Commercial Automobile Liability Insurance
  - (i) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury and property damage liability;

- (ii) Coverage: Owned, hired and non-owned vehicles.
- (d) Professional Liability Insurance (For Architects, Engineers and Environmental Consultants, if applicable)
  - (i) Limit of Liability: \$1,000,000 per occurrence.
  - (ii) Coverage: Error and omissions including liability assumed under Contract.
  - (iii) Professional Liability insurance may be written on a claims-made basis provided that coverage for occurrences happening during the performance of the work required under this Contract shall be maintained in full force and effect under the policy or “tail” coverage for a period of at least two (2) years after completion of the work.
- (e) “All Risk” property insurance covering all building structures, improvements, betterments, plate glass, equipment, trade fixtures, merchandise, business personal property and any other property in Licensee’s care, custody and control in the amount equal to the full replacement value of the Premises with no penalty for coinsurance, including coverage during any construction or reconstruction period.
- (f) The City of Philadelphia, the Fairmount Park Commission, its respective officers, employees and agents, shall be named as additional insureds on all policies required hereunder except the Workers Compensation and Employers’ Liability. All such policies shall include an endorsement stating that the coverage afforded these parties as additional insureds are primary to any other coverage available to them.

**11.02** Certificates of insurance, delivered to the City of Philadelphia, evidencing the required coverage shall be submitted to the City’s Risk Management Division, One Parkway, 1515 Arch Street, 14<sup>th</sup> Floor, Philadelphia, PA 19102, within ten (10) days after the execution date of this Agreement. Lessee shall furnish certified copies of the original policies of all insurance required under this Agreement at any time within ten (10) days after written request by the City.

**11.03** The insurance requirements set forth herein shall in no way be intended to modify, limit or reduce the indemnifications made in this Agreement by Tenant to the City or to limit Tenant’s liability under this Agreement to the limits of the policy(ies) of insurance required to be maintained by Tenant under this Agreement.

**11.04** All insurance policies shall provide for at least thirty (30) days prior written notice to be given to the City in the event the coverage is materially changed, canceled or not renewed. At least ten (10) business days prior to the expiration of each policy, Tenant shall deliver to the city a certificate of insurance evidencing the replacement policy(ies) to become effective immediately upon the termination of the previous policy(ies).

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

**11.06** Each of the parties hereto hereby releases the other from any and all liability for any loss or damage which may be inflicted upon the property of the releasing party to the extent of the insurance coverage therefore, even if such loss or damage shall be brought about by the fault or negligence of the other party, its agents or employees.

## **ARTICLE 12** **RELEASE**

**12.01** In consideration for the rights granted to Tenant under this Lease, Tenant does hereby remise, quitclaim, release and forever discharge, and by these presents does for Tenant's successors and assigns, agents, employees, contractors, subcontractors, officers, directors, students, licensees, subtenants, and any person claiming under or through them, hereby remise, quitclaim, release and forever discharge, the City, its officials, officers, agents, boards, commissions, employees, successors and assigns (acting officially or otherwise), from any and all, and all manner of, actions and causes of action, suits, claims and demands whatsoever in law or in equity which Tenant or any of them may have against the City, its officials, officers, agents, boards, commissions, employees, successors and assigns, relating in any way whatsoever, directly or indirectly, to (a) this Lease and/or the Premises; and/or (b) the existence, condition, operation, use or occupancy of any part(s) of the Premises by Tenant, its successors and assigns, agents, employees, contractors, subcontractors, officers, directors, students, licensees, subtenants and any person claiming under or through them, but this sentence shall not apply to the breach by the City of its obligations under this Lease. Tenant hereby voluntarily and knowingly assumes all risk of loss, damage and injury, including death, that may be sustained by Tenant, its successors and assigns, agents, employees, contractors, subcontractors, officers, directors, students, licensees, subtenants and any person claiming under or through them in connection with the Premises, other than that arising out of the City's gross negligence or willful misconduct.

## **ARTICLE 13** **SUBLETTING & ASSIGNMENT**

**13.01** Tenant may not transfer or assign this Lease, either in whole or in part, or mortgage, pledge or otherwise encumber this Lease, or the Leasehold estate demised hereunder without on each occasion first obtaining the prior written consent of Landlord, which may be withheld in Landlord's sole discretion. Tenant agrees that in the event of any approved transfer, assignment, Lease, Sublease, or other encumbrance of this Lease, Tenant will, nevertheless,

remain liable for the performance of its agreements and obligations under this Lease, and will require any transferee, assignee, or Permitted Licensee, as the case may be, to execute and deliver to Landlord an assumption of liability agreement, in form satisfactory to the Landlord, including, without limitation, the transferee's or assignee's ratification of, and agreement to be bound by, all of the provisions of this Lease. The failure or refusal of a transferee, assignee, Permitted Licensee or Subtenant to execute and deliver an assumption of liability agreement shall not release such transferee, assignee, Permitted Licensee or Subtenant from its liability to Landlord as set forth in this Lease.

**13.02** Any consent by Landlord to a transfer or assignment of this Lease by Tenant shall not constitute a waiver of future compliance by Tenant of the provisions of this Article 13 or a release of Tenant from the full performance by Tenant of any of the provisions of this Lease.

**ARTICLE 14**  
**SURRENDER OF PREMISES; HOLD OVER TENANCY**

**14.01** Tenant shall and will on the last day of the Term, or upon any earlier termination of this Lease, as the case may be, surrender and deliver up the Premises into the possession and use of Landlord without objection or delay, in good order, condition and repair, as required by this Lease, free and clear of all lettings and occupancies, and free and clear of all liens and encumbrances other than any created by Landlord.

**14.02 (a)** Upon the expiration or earlier termination of this Lease, Landlord shall designate in writing to Tenant those Improvements which Tenant must remove from the Premises (the "**Designated Improvements**"). Designated Improvements shall not include Improvements made in accordance with Phase I Plan or the Phase 2 Plan.

**(b)** Tenant shall make no claim for costs or expenses against Landlord relating to such removal and shall promptly repair all damage caused by such removal.

**(c)** If Tenant fails to remove any of its personal property or any of the Designated Improvements within the ninety (90) day removal period, Landlord may deem the personal property and Designated Improvements to have been abandoned by Tenant and Landlord may either retain the personal property and Designated Improvements as its property or dispose of it or them, without accountability to Tenant, in such manner as Landlord may see fit, including but not limited to selling such property and retaining the proceeds or demolishing and removing such property. If Landlord elects to remove the Tenant's or any other person's personal property or the Designated Improvements from the Premises, Tenant shall promptly reimburse Landlord for all costs of removal and restoration of the Premises upon demand from Landlord.

**14.03** Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant or any subtenant or sub-subtenant or Permitted Licensee.

**14.04** If, without the execution of a new lease or a written extension of this Lease, Tenant shall, with or without the consent of Landlord, hold over after the expiration of the Term,

Tenant shall be deemed to be occupying the Premises as a Tenant from month-to-month, and such tenancy may be terminated by Landlord upon 30-days written notice. Tenant shall occupy the Premises during any month-to-month tenancy pursuant to all the other terms, covenants and conditions set forth in this Lease.

**14.05** Without limiting the generality of Article 25, the provisions of this Article shall survive the expiration or termination of this Lease.

**ARTICLE 15**  
**DEFAULT OF TENANT; TERMINATION PROVISIONS; REMEDIES**

**15.01** Tenant will be in default of this Lease upon the occurrence of one or more of the following:

(a) Tenant's failure to pay Rent or Additional Rent due hereunder within ten (10) days after written notice of any such failure has been given by Landlord to Tenant;

(b) Tenant's failure to comply with the limitations on use the Premises set forth in Section 2.01 within thirty (30) days from receiving written notice from Landlord;

(c) Tenant's failure in keeping, observing or performing any of the terms, covenants or conditions contained in this Lease on Tenant's part to be kept, observed or performed within thirty (30) days from receiving written notice from Landlord, or, if such failure is due to any Permitted Licensee not performing under any Permitted License within forty-five (45) days from receiving written notice from Landlord, (or such longer period as may be reasonably necessary so long as Tenant, or Permitted Licensee is diligently pursuing the cure of such failure) including but not limited to the following:

(i) failure to maintain and Repair the Improvements;

(ii) except in the event of an emergency as set forth in Section 7.01 above, performing any Alterations without the prior approval of City;

(iii) failure to perform the Alterations in accordance with Section 9.01;

(iv) execution of a sublease and/or license in violation of Article 13 and/or the terms of which violates Section 9.03;

(v) interference with or obstruction of public access to and across the Premises and public use of the Premises in violation of Section 9.01 resulting from the act or omission of Tenant, or any Permitted Licensee(s);

(vi) obstruction or prevention of City access to the Premises in violation of Article 8 resulting from the act or omission of Tenant, or any Permitted Licensee(s);

(vii) failure to obtain and/or maintain insurance in accordance with Article 11;

(viii) failure to prevent a lien from attaching to or being filed against the Premises arising out of any act or omission by Tenant or any Permitted Licensee.

(d) Tenant files or shall have filed against it a petition of bankruptcy or for arrangement, reorganization or other relief concerning its indebtedness under any federal or state statute, or makes an assignment for the benefit of creditors, or is adjudicated bankrupt or declared insolvent by the decree of a court of competent jurisdiction, or initiates any proceedings for, or consents to, the appointment of a receiver or similar official of its assets, or if any such proceeding is initiated against it, and any such proceeding or receivership shall continue unstayed and in effect for a period of sixty (60) days, or admits in writing its inability to pay its debts generally as they become due, or if Tenant takes any action in contemplation of any of the foregoing.

(e) Any representation or warranty made by CCD in this Agreement is false or becomes untrue and such representation or warranty remains untrue for thirty (30) days after notice thereof is delivered to CCD.

(f) Tenant at any time fails to comply with Applicable Law in any respect and such failure to comply continues for thirty (30) days after Tenant learns of such failure or any Permitted Licensee(s) at any time fail to comply with Applicable Law in any respect and such failure continues to for forty (45) days after Tenant learns of such failure.

**15.02** Upon a default by Tenant, Landlord shall be entitled to do one or more of the following:

- (a) bring legal action to recover all Rent and Additional Rent which is over due, if any;
- (b) declare the Lease immediately terminated and upon such termination Tenant shall immediately vacate the Premises and remove Tenant's property and the Improvements from the Premises in accordance with Section 14.02 above;
- (c) bring legal action to repossess the Premises;
- (d) declare the Rent and all items of Additional Rent for the entire balance of the Term, immediately due and payable, together with all other charges, payments, costs, and expenses payable by Tenant as though such amounts were payable in advance on the date the event of default occurred;
- (e) bring legal action against Tenant to recover damages suffered by Landlord arising out of Tenant's default;

- (f) require CCD to assign all of its rights, title and interest in: 1) the Café Structure; and 2) the Development Agreement to the City, including any remaining Improvement Funds or Maintenance Funds (as defined in the Development Agreement) and the City shall assume CCD's remaining responsibilities set forth in the Development Agreement;
- (g) seek all rights and remedies available at law or in equity.

**15.03** Tenant hereby expressly waives, so far as permitted by law, the service of any notice of intention to enter or re-enter provided for in any statute now existing or enacted in the future, or of the institution of legal proceedings to that end, and Tenant, for and on behalf of itself and all persons claiming through or under Tenant also waives any and all right of redemption or re-entry or re-possession or to restore the operation of this Lease in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge or in case of entry, re-entry or re-possession by Landlord. Tenant hereby waives trial by jury in any claim, action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises or any claim of injury or damage.

**15.04** No failure by Landlord to insist upon the strict performance of any provision of this Lease or to exercise any right or remedy consequent upon a default thereof, and no acceptance by Landlord of full or partial Rent or Additional Rent during the continuance of any such default, shall constitute a waiver of any such provision. No provision of this Lease to be kept, observed or performed by Tenant, and no default thereof, shall be waived, altered or modified except by a written instrument executed by Landlord. No waiver of any default shall affect or alter this Lease, but each and every provision of this Lease shall continue in full force and effect with respect to any other then existing or subsequent default thereof.

**15.05** Tenant shall be liable for and shall promptly pay upon demand all of Landlord's actual and reasonable costs, charges and expenses, including the fees of counsel, agents and others retained by Landlord (or, if Landlord uses its own employees for such services, the amount that Landlord would have paid had it engaged the services of outside counsel or others) incurred by Landlord (a) in any litigation in which Tenant causes Landlord to become involved, and (b) in connection with any action brought by Landlord to enforce any right or remedy against Tenant upon a default by Tenant under this Lease.

**15.06** Tenant expressly waives the benefits of all present and future laws exempting any goods on the Premises, or elsewhere, from distraint, levy, or sale in any legal proceedings taken by the Landlord to enforce any rights under this Lease.

**15.07** No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy herein or by law provided, but each shall be cumulative and in addition to every other right or remedy given herein or now or hereinafter existing at law or in equity or by statute.

**ARTICLE 16**  
**COMPLETE AGREEMENT**

**16.01** This Lease sets forth all the promises, agreements, conditions, and understandings between Landlord and Tenant relative to the Premises and improvements now existing or in the future constructed on the Premises, and there are no promises, agreements, conditions or understandings, either oral or written, between them other than as herein set forth.

**ARTICLE 17**  
**CITY'S RIGHT TO ENFORCE STRICTLY**

**17.01** Any law, usage or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce all provisions of this Lease in strict accordance with their terms, notwithstanding any conduct or custom on the part of Landlord in refraining from so doing at any time or times, or from enforcing its rights hereunder strictly in accordance with the same. Any such conduct or custom shall not be construed as having created a custom in any way or manner contrary to any specific provision of this Lease, or as having in any way or manner modified the same.

**ARTICLE 18**  
**MEMBERSHIP**

**18.01** In accordance with Chapter 17-400 of The Philadelphia Code, Tenant agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment, on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin or ancestry, constitutes, without limiting the generality of Article 15, a substantial breach of this Lease entitling Landlord to all rights and remedies provided in this Lease or otherwise available in law or equity.

**18.02** Tenant agrees to include the immediately preceding paragraph, with appropriate adjustments for the identity of the parties, in all Leases, contracts and subcontracts which are entered into for work to be performed pursuant to this Lease.

**18.03** Tenant further agrees to cooperate with the Commission on Human Relations of the City in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall constitute, without limiting the generality of Article 15, a substantial breach of this Lease entitling Landlord to all rights and remedies provided in this Lease or otherwise available in law or equity.

**ARTICLE 19**  
**LEASE BINDING**

**19.01** This Lease shall be binding upon Landlord and Tenant, their successors and assigns, subject to the provisions of Article 13 above.

**ARTICLE 20**  
**COMPLIANCE WITH LAWS, ORDINANCES AND REGULATIONS**

**20.00** (a) In this Lease, the term “Applicable Law(s)” shall mean all present and future federal, state, and municipal laws, ordinances, codes, notices, orders, rules regulations and requirements relating to Tenant, Permitted Licensee or any Subtenant or sub-subtenant, the condition, use or manner of use of the Premises, and the property of which the Premises is a part, including but not limited to the following: (a) that certain Federal legislation commonly known as the “Americans With Disabilities Act of 1990,” PL Sections 101-336, codified generally at 42 U.S.C. Sections 12101 *et. seq.*, (b) all laws governing or regulating the use, presence and/or disposal of “Hazardous Substances” (as defined below), (c) the “Fair Practices Ordinance” (codified in The Philadelphia Code, at Chapter 9-1100), (d) The Philadelphia Code, and (d) all laws and regulations related to fire suppression mechanisms and plans.

(b) In this Lease, the term “Hazardous Substances” shall mean: (i) asbestos, flammables, volatile hydrocarbons, petroleum products, natural gas, and synthetic gas and shall include, but not be limited to, substances defined as “hazardous substances”, “hazardous wastes”, “toxic substances,” “pollutants,” or “contaminants” as those terms are used in any Applicable Laws; (ii) any and all other materials or substances that any governmental agency or unit having appropriate jurisdiction shall determine from time to time are harmful, toxic or dangerous or are otherwise required to be removed, cleaned up or remediated.

(c) In this Lease, the term “Contamination” shall mean the uncontained presence of Hazardous Substances in, on, or about the Premises, or arising at any time from the Premises, which may require remediation or removal under any of the Applicable Laws.

**20.01** Tenant at its sole cost and expense shall perform all activities undertaken pursuant to this Lease in compliance with all Applicable Laws. Tenant acknowledges that the condition of the Premises may not presently comply with all Applicable Laws and agrees that, to the extent Tenant, or any Permitted Licensee constructs, installs and/or performs Improvements, or any other Alterations and/or any Repairs, it shall be Tenant’s responsibility to cause such construction, installation and/or performance to occur in accordance with the terms of this Lease and all Applicable Laws.

**ARTICLE 21**  
**NOTICES**

**21.01** All notices, requests, and other communications required under this Lease shall be in writing and shall be sent by (a) United States registered or certified mail, return receipt requested, postage prepaid, (b) hand delivery with receipt obtained, or (c) by a nationally recognized overnight courier service providing receipted proof of delivery, addressed as follows:

**If intended for Landlord:**

Fairmount Park Commission  
1515 Arch Street  
10<sup>th</sup> Floor  
Philadelphia, PA 19102  
Attn: Executive Director

**with a copy to:**

Divisional Deputy City Solicitor—Real Estate  
City of Philadelphia Law Department  
One Parkway  
1515 Arch Street  
17th Floor  
Philadelphia, PA 19102

Risk Manager  
City of Philadelphia  
One Parkway  
1515 Arch Street  
14<sup>th</sup> Floor  
Philadelphia, PA 19102

**If intended for the Tenant:**

Center City District  
660 Chestnut Street  
Public Ledger Building  
Philadelphia, PA 19106  
Attn: Executive Director

**With a copy to:**

Bernard B. Kolodner, Esquire  
Kleinbard Bell and Brecker LLP  
Suite 700  
1900 Market Street  
Philadelphia, PA 19103

or to such other individual and/or address as the party to receive notice may from time to time designate by written notice to the other party in the manner above described. The effective date of any notice given by either party will be the date such notice is either received or rejected by the addressee.

**ARTICLE 22**  
**CAPTIONS AND SECTION NUMBERS**

**22.01** The captions, article numbers and paragraph numbers appearing in this Lease are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provisions of this Lease nor in any way affecting this Lease.

**ARTICLE 23**  
**PARTIAL INVALIDITY**

**23.01** If any provision of this Lease or the application thereof to any party or circumstance shall, to any extent, be adjudged invalid or unenforceable by a court of competent jurisdiction, the remainder of this Lease, or the application of such provision to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

**ARTICLE 24**  
**AMENDMENT AND MODIFICATION**

**24.01** This Lease shall not be amended, modified or supplemented unless by agreement in writing signed by both Landlord and Tenant. No oral representations, whenever made, by any official, commissioner, or employee of Landlord shall be effective to amend the terms of this Lease. Landlord'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 does not constitute Landlord's consent to Tenant's request or offer, and Tenant promises to strictly comply with its obligations under this lease unless and until its request or offer is explicitly accepted in writing by Landlord.

**ARTICLE 25**  
**SURVIVAL**

**25.01** Any and all provisions set forth in this Lease which, by its or their nature, would reasonably be expected to be performed after the expiration or earlier termination of this Lease shall survive and be enforceable after the expiration or earlier termination of this Lease. Any and all liabilities, actual or contingent, which shall have arisen in connection with this Lease, shall survive any expiration or termination of this Lease.

**ARTICLE 26**  
**FIRE OR CASUALTY DAMAGE**

**26.01 (a) Material Destruction.** If in the Landlord's judgment the Premises shall be substantially or totally destroyed by fire, explosion, windstorm, tornado or other casualty, or if the Premises should be damaged so that, in the Landlord's sole discretion, Tenant's ability to use the Premises for the purposes set forth in this Lease will be impaired for a period greater than one hundred eighty (180) calendar days after written notice by Tenant to Landlord of the destruction ("Material Destruction"), Landlord shall have the option of terminating this Lease as of the date of the subject Material Destruction by delivering to Tenant written notice of termination, whereupon this Lease shall absolutely cease and terminate and the parties shall be relieved of all future liabilities; provided that the insurance proceeds as set forth in Article 11 shall be applied to cover losses sustained.

**(b) Partial Destruction.** If the damage by fire, explosion, windstorm, tornado or other casualty can, in the sole discretion of the Landlord, be reasonably rebuilt or repaired within 90 calendar days from the date of the written notification by Tenant to Landlord of the destruction ("Partial Destruction"), Landlord may elect, at its sole discretion, whether to

terminate this Lease or continue this Lease for the permitted use by giving written notice thereof to the Tenant. Should Landlord elect to continue the Lease, Tenant shall promptly repair the Partial Destruction at the sole cost and expense of Tenant. Tenant shall be obligated to continue this Lease if Landlord so chooses

**ARTICLE 27**  
**CONDEMNATION**

**27.01** If the Premises or any part thereof shall be taken under condemnation proceedings or by eminent domain, Landlord may, at Landlord's sole option, terminate this Lease as of the date when the taking becomes final and unappealable. All damages awarded for such taking shall belong to and become the property of Landlord. Tenant shall have no claim against Landlord by reason of such taking or termination and, except as explicitly set forth in this Article 27, shall not have any claim or right to any portion of the amount that may be awarded to City as a result of any such taking.

**27.02** The entire compensation awarded in or by reason of such condemnation proceedings shall belong to Landlord without any deduction therefrom for any present or future estate or interest of Tenant, and Tenant hereby assigns to Landlord all of Tenant's right, title and interest in and to any and all such compensation together with any and all rights, estate and interest of Tenant now existing or hereafter arising in and to the same or any part thereof.

**27.03** Notwithstanding the foregoing, Tenant shall have a right to make a claim against the condemnor for moving and related expenses (if applicable) which are payable to Tenants under Section 1-601A of the Pennsylvania Eminent Domain Code of 1964, as amended, or any substantially similar provision of any successor statute.

**ARTICLE 28**  
**GOVERNING LAW; WAIVER OF JURY TRIAL; VENUE**

**28.01** This Lease shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

**28.02** Tenant expressly waives trial by jury in any action, proceeding, or counterclaim arising out of or in any way connected to this Lease.

**28.03** All suits or other actions arising from this Lease shall be brought in the Court of Common Pleas for Philadelphia County.

**ARTICLE 29**  
**TIME OF THE ESSENCE**

**29.01** Time is of the essence in Tenant's performance of its obligations and duties under this Lease.

**ARTICLE 30**

### **THIRD PARTY BENEFICIARY**

**30.01** Nothing in this Lease is intended nor shall it be deemed or construed to confer any benefit or right upon any party other than Landlord and CCD.

### **ARTICLE 31**

#### **TENANT'S RECORDS; ANNUAL REPORTS; AUDIT OF AFFAIRS**

**31.01** Tenant shall keep complete and accurate books of accounts and other records relating to its use and occupancy of the Premises, including but not limited to its construction of the Improvements, maintenance of the Premises, and the management of any Permitted Licensee(s) on the Premises, within the City of Philadelphia and maintained in accordance with generally accepted accounting principles.

**31.02** City, or its duly authorized representatives, shall have the right to inspect and audit all of Tenant's books of account and other records for the Premises required by this Lease at all reasonable times and at such place as the City may reasonably prescribe.

**31.03 (a)** Tenant shall submit to City within sixty (60) days following each Lease Year during the Initial Term or any Renewal Term, a report which includes a description of the activities undertaken by Tenant on or with respect to the Premises and a detailed income and expenses statement for the most recently completed fiscal year of Tenant with respect to the Premises including not limited to an accounting of all income expenditures. Tenant shall also promptly submit any supplemental reports, documents, records, and other information that the City may require with respect to Tenant's operations of the Premises.

**(b)** Tenant shall submit annually to the City a list of the members of its Board of Directors and its corporate officers. Tenant shall notify the City immediately of any change in the composition of its Board of Directors and officers.

### **ARTICLE 32**

#### **CERTIFICATION OF NON-INDEBTEDNESS**

**32.01** Tenant's hereby certifies and represents that Tenant and Tenant's parent company(ies), subsidiary(ies), and affiliate(s), if any, and Tenant's Directors and Officers are not currently indebted to the City, other than debts incurred in the ordinary course of business, and will not at any time during the Term 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 satisfactory to the City has been established except to the extent as may be permitted by Applicable Laws. In addition to any other rights or remedies available to the City under this Lease and/or at law or in equity, Tenant acknowledges that any breach or failure to conform to this certification may, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, result in the termination of this Lease for default (in which case Tenant shall be liable for all excess costs and other damages, including but

not limited to those set forth in Article 15 of the Lease, resulting from the termination). Nothing set forth in this Article shall limit the generality of Article 15.

**32.02** Tenant shall require contractors performing work in connection with this Lease to be bound by the following provision and Tenant shall cooperate fully with the City in exercising the rights and remedies described below or otherwise available at law or in equity:

Subcontractor (the “Subcontractor”) hereby certifies and represents that Subcontractor and Subcontractor’s parent company(ies) and subsidiary(ies) are not currently indebted to the City of Philadelphia (“City”), other than debts incurred in the ordinary course of business, and will not at any time during the term of Tenant’s Lease with the City (“Lease”), including any extensions or renewals thereof, 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 satisfactory to the City has been established except to the extent as may be permitted by Applicable Laws. In addition to any other rights or remedies available at law or in equity, Subcontractor acknowledges that any breach of or failure to conform to this certification may, at the option and direction of the City, result in the termination of the Lease (in which case Subcontractor will be liable for all excess costs and other damages resulting from the termination).

**ARTICLE 33**  
**QUIET ENJOYMENT**

**33.01** So long as Tenant shall (i) pay the Rent, Additional Rent, and other charges herein provided within the respective times provided therefore, and (ii) observe and perform all covenants, terms and conditions on Tenant’s part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term without hindrance or interruption by Landlord or anyone lawfully claiming through Landlord, subject, however, to the terms and conditions of this Lease.

**ARTICLE 34**  
**APPROVALS BY CITY; SUBMISSIONS TO CITY**

**34.01** Without limiting Section 5.06, unless otherwise stated explicitly in this Lease, any review, approval, permission, or consent that Tenant is required to obtain from the City under this Lease shall not be valid or effective unless obtained or confirmed in writing from the Executive Director of the Fairmount Park Commission or the Executive Director’s designee. Unless otherwise specified, all reports, notices, plans, specifications, certificates, requests for approval, and submissions required of Tenant by this Lease shall be submitted to the Executive Director of Fairmount Park or the Executive Director’s designee.

**ARTICLE 35**  
**MACBRIDE PRINCIPLES: FAIR EMPLOYMENT PRACTICES**

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

**35.02** In its use and occupancy of the Premises under this Lease, Tenant agrees that it will not utilize any suppliers, subcontractors or subconsultants at any tier (i) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (ii) who will provide products originating in Northern Ireland unless said supplier, subconsultant or subcontractor has implemented the fair employment principles embodied in the MacBride Principles. Tenant further agrees to include the provisions of this Section 35.02 with appropriate adjustments for the identity of the parties, in all subcontracts and supply agreements which are entered into in connection with the performance of this Lease.

**35.03** Tenant agrees to cooperate with the City's Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of The Philadelphia Code. Tenant expressly understands and agrees that any false certification or representation in connection with this Article 35 and/or any failure to comply with the provisions of this Article 35 shall constitute a substantial breach of this Lease entitling the City to all rights and remedies provided in this Lease or otherwise available at law (including, but not limited to, Section 17-104 of The Philadelphia Code) or in equity. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. Section 4904.

### **ARTICLE 36** **LIMITATION OF LIABILITY**

**36.01** In any action brought to enforce the obligations of Tenant arising under this Lease, the judgment or decree shall be enforceable against Tenant only to the extent of Tenant's interest in this Lease and its interests in any Permitted Licenses. No such judgment or decree shall provide for or allow execution on, nor be a lien on, any other assets of Tenant, or of any director, officer, employee, agent, or other representative of Tenant.

### **ARTICLE 37** **TENANT'S DUTIES AND COVENANTS PURSUANT TO 17-1400**

If Tenant is a City-Related Agency, as defined at Philadelphia Code Subsection 17-1401(9), Tenant shall abide by the provisions of Philadelphia Code Chapter 17-1400 in awarding any contract(s) pursuant to this Agreement as though such contracts were directly subject to the provisions of Chapter 17-1400, except that the exception set forth at Subsection 17-1406(8) shall apply to Tenant as if Tenant were listed in that subsection.

Unless approved by the City to the contrary, any approvals required by the Philadelphia Code Chapter 17-1400 to be performed by the City Solicitor shall be performed by Tenant by its President and CEO; any approvals required to be performed by the Director of Finance shall be performed by Tenant by its Chief Financial Officer; and any approvals required to be performed by the Mayor shall be performed by Tenant by its President and CEO.

**ARTICLE 38**

**MINORITY, WOMAN AND DISABLED BUSINESS ENTERPRISE PARTICIPATION**

In accordance with Executive Order 02-05, as it may be amended from time to time, the City has established an antidiscrimination policy that relates to the solicitation and inclusion of Minority Business Enterprises (“MBE”), Woman Business Enterprises (“WBE”), and Disabled Business Enterprises (“DSBE”) (collectively, “M/W/DSBE”) in City contracts. The purpose of Executive Order 02-05 is to ensure that all businesses desiring to do business with the City have an equal opportunity to compete by creating access to the City’s procurement process and meaningfully increasing opportunities for the participation by M/W/DSBEs in City contracts at all tiers of contracting, as prime contractors, subcontractors and joint venture partners. In furtherance of this policy, the City will, from time to time, establish participation ranges for City Contracts and City Related Special Projects. Tenant agrees to comply with the requirements of Executive Order 02-05 if such participation ranges are established by the City for this Lease.

**[Signatures appear on the following page]**

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have caused this Lease to be executed the day and year first above written.

Approved as to form by  
Romulo L. Diaz, Jr., City Solicitor

**LANDLORD:**  
FAIRMOUNT PARK COMMISSION

As per: \_\_\_\_\_  
Douglas Kubinski  
Assistant City Solicitor

BY: \_\_\_\_\_  
Robert Nix, III, President

BY: \_\_\_\_\_  
Mark A. Focht, Executive Director

[SEAL]

**TENANT:**  
CENTER CITY DISTRICT

BY: \_\_\_\_\_  
Paul Levy, Executive Director

BY: \_\_\_\_\_  
Secretary/Treasurer

**LIST OF EXHIBITS**

- Exhibit A: Premises
- Exhibit B: Development Agreement
- Exhibit C: Limited City Services and Limited Tenant Services
- Exhibit D: Phase 2 Plans

**EXHIBIT A**

Premises

The triangular shaped park located between 16<sup>th</sup> and 17<sup>th</sup> Streets, north of Benjamin Franklin Parkway and south of the most southerly side of Cherry Street.

**EXHIBIT B**

Development Agreement

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is made and entered into this \_\_\_\_ day of September, 2005, by and between Center City District, a body corporate and politic existing under the laws of the Commonwealth of Pennsylvania (“**CCD**”), and AGL Investments No.2 Limited Partnership L.L.L.P., a Colorado limited liability limited partnership (“**AGL**”).

### BACKGROUND

AGL is the owner of certain property known as Three Parkway, Philadelphia, Pennsylvania (the “**AGL Property**”);

CCD is a special services district formed under the Commonwealth of Pennsylvania’s Municipal Authorities Act to provide security, cleaning, promotion, and capital improvement services that supplement, but do not replace, both basic services provided by the City of Philadelphia and the responsibilities of property owners located in the district;

The Fairmount Park Commission, on behalf of the City of Philadelphia (collectively, “**City**”), is charged with the jurisdiction and care of a certain triangular-shaped park commonly called 3 Parkway Plaza (“**Park**”). The Park is located between 16th and 17th Streets, north of Benjamin Franklin Parkway and south of Cherry Street, in the City of Philadelphia. The Park is located across Cherry Street from the front entrance to the AGL Property;

AGL desires to assist CCD in improving and maintaining the Park to better serve the tenants of, and to potentially enhance, the AGL Property, and to better serve the citizens of Philadelphia. AGL is willing to provide \$700,000 (the “**Total Funds**”) to the CCD pursuant to the terms of this Agreement in order to improve the Park, with

- (i) \$450,000 (the “**Improvements Funds**”) to be used for the initial construction and installation of various improvements to landscaping, furnishings, walkway paving, lighting, signage and other elements to improve the overall attractiveness and condition of the Park and enhance its character as an entrance to the AGL Property, as per Exhibit A, attached to and made part of this Agreement (the “**Improvements**”), and
- (ii) \$250,000 (the “**Maintenance Funds**”) to be used for the work set forth on Exhibit B for approximately five (5) years after the completion of the Improvements (the “**Maintenance Work**”), with the amount of the Maintenance Funds approximating five (5) times the annual estimated cost of the Maintenance Work;

CCD is willing to fund design costs for the Improvements upon (i) execution of this Agreement and (ii) deposit by AGL of the Total Funds in escrow with CCD. In addition, to the extent that the cost of the Improvements exceed the Improvements Funds, CCD is willing to fund such excess. CCD has also agreed to maintain the Improvements and the Park, using the Maintenance Funds during the period beginning on the date of the completion of the

Improvements and ending on the earlier of the fifth (5th) anniversary of the completion of the Improvements or December 31, 2011 (the “**Maintenance Period**”); and

CCD and AGL acknowledge that AGL’s share of ongoing costs of the Maintenance Work is being deposited into escrow pursuant to this Agreement and CCD will not increase the assessment against the AGL Property as a result of the cost of the Maintenance Work during the Maintenance Period, although AGL will continue to pay its regular CCD assessment against the AGL Property.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the covenants contained herein, and with the intent to be legally bound hereby, the parties hereto agree as follows:

1. **Incorporation of Recitals**: The foregoing Background recitals are acknowledged to be true and correct and are incorporated herein by reference.

2. **Engagement of Planner**: CCD has engaged the design firm of Cope Linder to design (or cause to be designed) the Improvements. For purposes of this Agreement, the Improvements are intended to be in the nature of repair and refurbishment improvements and not what the parties have contemplated as “Phase II” improvements, which could include kiosks and fountains. CCD shall obtain AGL’s approval of any material change in the design concept for the Improvements from that embodied in Exhibit A.

3. **Deposit of Total Funds; Accounting**: AGL, by wire transfer, shall deposit with CCD the Total Funds promptly upon execution of this Agreement. CCD shall hold the Total Funds in escrow, with the Improvements Funds being held for the purpose of paying for construction of the Improvements (and for no other purpose, except as herein set forth), and the Maintenance Funds being held for the performance of the Maintenance Work. CCD may commingle any portion of the Total Funds with CCD’s other assets, and need not create a separate account for any portion of the Total Funds. CCD shall keep books and records evidencing the application of the Improvements Funds to construction of the Improvements and the application of the Maintenance Funds to the Maintenance Work. Periodically, during construction of the Improvements, and in any event, within ten (10) days after AGL’s written request, but in any event, not more frequently than every three (3) months, CCD shall provide to AGL statements showing all expenditures from the Improvements Funds, with backup documentation from the applicable contractors. Periodically, during the Maintenance Period, and in any event, within twenty (20) days after AGL’s written request, but not more frequently than once for each calendar year, CCD shall provide to AGL statements showing all expenditures from the Maintenance Funds, with reasonable backup documentation from the applicable contractors.

4. **Application of Improvements Funds**: CCD shall apply the Improvements Funds to pay, from time to time, invoices from the contractors and materials suppliers, and for labor in connection with construction the Improvements. To the extent the cost of the construction of the Improvements exceeds the Improvements Funds, CCD shall supply the

excess. In no event will AGL have any responsibility whatsoever for any other improvements made to the Park.

5. **Completion of the Improvements:** CCD will use commercially reasonable efforts to complete the Improvements by December 31, 2005, provided that planting is expected to take place in the Spring of 2006. In the event the Improvements are not completed within one (1) year after the date of this Agreement, AGL, after notice to CCD, may complete the Improvements, and CCD will refund such portion of the Improvements Funds to AGL equal to the amount expended by AGL in connection with completion of the Improvements within thirty (30) days after the date CCD receives AGL's invoice for such amount, with backup documentation from the contractor.

6. **Excess Improvements Funds:** CCD will notify AGL when the Improvements have been completed. Any excess of the Improvements Funds over the cost of constructing the Improvements shall be added to the Maintenance Funds.

7. **Maintenance:**

a. **The Maintenance Work.** CCD will perform all of the Maintenance Work, for the period between the completion of the Improvements through the end of the Maintenance Period. CCD will have the right to use the Maintenance Funds to perform the Maintenance Work, although CCD will use reasonable efforts to use only one-fifth (1/5) of the Maintenance Funds for the Maintenance Work during each of the five (5) years after completion of the Improvements.

b. **AGL's Requests with Respect to the Maintenance Work.** In performing the Maintenance Work, CCD will use commercially reasonable efforts to address AGL's requests with respect to the Maintenance Work, taking into account the amount of the Maintenance Funds budgeted for that year. Such requests by AGL may include (by way of example and not limitation) areas or items requiring additional maintenance or the types of vegetation used for annual plantings.

c. **Maintenance Standard.** CCD will perform the Maintenance Work, or cause the Maintenance Work to be performed, during the term of this Agreement in a commercially reasonable manner consistent with other parks in the Franklin Parkway vicinity, taking into account that the annual budgeted amount of the Maintenance Funds may provide more or less funding for the Maintenance Work than is available for comparable work at such other parks (the "**Maintenance Standard**"). If AGL reasonably believes that CCD has failed to perform the Maintenance Work in a manner consistent with the Maintenance Standard, AGL will have the right to deliver notice to CCD, specifying the nature of such failure. After delivery of such notice, representatives of AGL will coordinate with CCD to be available at reasonable times to discuss such failure with CCD representatives. If CCD has not cured the failure within thirty (30) days after AGL's notice, AGL will have the right to deliver a second notice to CCD, clearly stating that if CCD does not cure such failure within ten (10) days after receipt of such notice, AGL will have the right to cure such failure at CCD's cost. If CCD does not cure the applicable failure within ten (10) days after the second notice, AGL will have the right to cure the failure such that the Park meets the Maintenance Standard, using reputable and licensed

contractors charging commercially reasonable prices, at CCD's cost. AGL will notify CCD of the charges incurred in connection with curing the applicable failure by delivery of an invoice to CCD therefor. CCD will have the right to use the Maintenance Funds to pay any amounts due under this Section 7c

d. Term of Agreement. This Agreement will be in effect from the date hereof until the end of the Maintenance Period.

8. Other Activities of CCD in the Park. CCD will not permit, and will use commercially reasonable efforts to cause the City to not permit, public food service on the Park, except in connection with the retail sale operations of CCD or its licensees or tenants, if any. CCD and AGL shall use commercially reasonable efforts to cause the City to enforce all Fairmount Park regulations relating to food services in the Park.

9. Miscellaneous:

a. This Agreement constitutes the entire Agreement and understanding between the parties hereto, and there are no other agreement or understandings, written, verbal or otherwise, relating to the subject matter hereof.

b. This Agreement, or any term or provision hereof, may not be amended or modified except in a writing signed by the parties hereto, and any modifications, amendment, change, or discharge shall be of no effect or force unless the same is set forth in such writing.

c. This Agreement is binding upon and benefits the parties hereto, and their respective successors and assigns.

d. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.

e. Notwithstanding anything in this Agreement that may be construed to the contrary, any liability for damages, breach or nonperformance by AGL, or arising out of the subject matter of, or the relationship created by, this Agreement, will be collectible only out of AGL's interest in the Building and no personal liability is assumed by, or will at any time be asserted against, AGL, its parent and affiliated corporations, partnerships and limited liability companies, its and their partners, venturers, directors, officers, shareholders, members, managers, agents and employees, or any of its or their successors or assigns; all such liability, if any, being expressly waived and released by CCD. In no event will AGL be liable to CCD or any other person for consequential, special or punitive damages, including, without limitation lost profits.

f. Notwithstanding anything in this Agreement that may be construed to the contrary, any liability for damages, breach or nonperformance by CCD, or arising out of the subject matter of, or the relationship created by, this Agreement, will be collectible only out of assets of CCD and no personal liability is assumed by, or will at any time be asserted against, CCD, the City, its agencies and instrumentalities, its and their elected officials, directors, officers, members, managers, agents or employees, or any of its or their successors or assigns; all such liability, if any, being expressly waived and released by AGL. In no event will CCD be

liable to AGL or any other person for consequential, special or punitive damages, including, without limitation lost profits.

g. AGL and CCD each agree that at any time and from time to time (but on not less than ten (10) days' prior request by one party (the "**Requesting Party**")), the other party (the "**Responding Party**") will execute, acknowledge and deliver to the Requesting Party a certificate indicating any or all of the following: (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, as modified, and stating the date and nature of each modification); (b) the then-current status of the deposit of the Improvements Funds and the Maintenance Funds and/or the construction and installation of the Improvements; (c) that no default by the Requesting Party or the Responding Party exists which has not been cured, except as to defaults stated in such certificate; and (d) such other matters as may be reasonably requested by the Requesting Party. Any such certificate may be relied upon by the Requesting Party and any party reasonably designated in such certificate by the Requesting Party.

h. All notices required or permitted to be given hereunder shall be in writing and sent by overnight mail, by nationally recognized courier service, such as Federal Express, customarily obtaining proof of delivery, addressed as follows:

If to CCD  
Paul R. Levy, President & CEO  
Center City District  
660 Chestnut Street  
Public Ledger Building  
Philadelphia, PA 19106

with a copy to  
Bernard B. Kolodner, Esquire  
Kleinbard Bell & Brecker, LLP  
1900 Market Street, Suite 700  
Philadelphia, PA 19103

If to AGL  
AGL Investments No.2 Limited Partnership L.L.L.P.  
c/o Amstar Group, LLC  
1050 Seventeenth Street, Suite 1200  
Denver, Colorado 80265  
Attention: Director of Office Investments

or to such other person or address as the party to be charged with such notice may designate by notice given in the aforesaid manner. Notice may be given by counsel.

i. Neither AGL nor CCD will record this Agreement, or any short form memorandum thereof, without the other party's prior written consent.

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto have caused this Agreement to be executed the day and year first above written.

**AGL INVESTMENTS No.2 LIMITED  
PARTNERSHIP L.L.L.P.**, a Colorado limited liability  
limited partnership

**CENTER CITY DISTRICT**

By: APL GENERAL, LLC,  
a Colorado limited liability company,  
its General Partner

BY: \_\_\_\_\_  
Paul Levy, President

By: AMSTAR PARTNERS, INC., a Colorado  
corporation, its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BY: \_\_\_\_\_  
Secretary/Treasurer

**EXHIBIT A (to Development Agreement)**

**Design Concept**

[See Attached]

**EXHIBIT B (to Development Agreement)**

**Maintenance Work**

1. Maintain street and pole lighting within the park, including light bulbs
2. Power wash sidewalks, monthly April – November
3. Repair/replace trash receptacles
4. Remove graffiti, as needed
5. Litter pick up, 3 times per day
6. Repair bollard lighting, as needed
7. Prune trees/shrubs, as needed
8. Mow and maintain grass, as needed
9. Rake leaves, as needed
10. Plant and maintain flower beds, annually
11. Repair/replace sidewalks, as needed, including any bollards
12. Maintain/repair/replace irrigation systems, as needed
13. Repair/replace benches

**EXHIBIT C**  
Limited City Services and Limited Tenant Services

**Limited City Services:**

1. Police patrolling/protection
2. Trash pickup
3. Rodent Control
4. Fire/ambulance services
5. Road maintenance to Cherry Street after Phase 1 Work
6. Maintenance of vehicular lighting fixtures along 16th Street, Cherry Street and the 1600 block of the Parkway
7. Utility charges for pedestrian lighting within the park.

**Limited Tenant Services:**

1. Maintain street and pole lighting within the park, including light bulbs
2. Power wash sidewalks, monthly April – November
3. Repair/replace trash receptacles
4. Remove graffiti, as needed
5. Litter pick up, 3 times per day
6. Repair bollard lighting, as needed
7. Prune trees/shrubs, as needed
8. Mow and maintain grass, as needed
9. Rake leaves, as needed
10. Plant and maintain flower beds, annually
11. Repair/replace sidewalks, as needed, including any bollards
12. Maintain/repair/replace irrigation systems, as needed
13. Repair/replace benches

## EXHIBIT D

### Phase 2 Plan

The objective of the second phase of improvements is to activate and animate this gateway to the Benjamin Franklin Parkway and Fairmount Park with a café and information facility and with an open and inviting space for outdoor seating.

The plan includes a paved area for public use at the southeastern end of the site, removal of several old trees and planting of new cherry trees, relocation and addition of pedestrian light fixtures, and the construction of a 1,200 square foot pavilion with accompanying structural, mechanical and electrical services necessary for operating food and visitor information services. Al fresco food service will be available on site as weather permits.

#### *Landscape*

In order to engage the Parkway sidewalk and pedestrians and to recognize adjacent public spaces, the paving pattern is oriented toward them. Materials were chosen to match materials used in Phase I improvements of the park. Exposed aggregate and granite paving are used to embellish the paved area, and concrete is chosen to match existing sidewalks. Two sets of granite benches are proposed to match the existing benches on the west corner of the park. A special granite banding is proposed to give prominence to the existing "Prophet" statue.

Tables and umbrellas will be randomly, yet permanently, placed throughout the seating area. Chairs will be provided by Licensee. An open pathway will lead to the back of the pavilion (along 16<sup>th</sup> St.) in order to provide access to south bound pedestrians. This pathway also provides efficient access to the trash room of the pavilion. Two bike racks along 16<sup>th</sup> Street will provide security for cyclists using Triangle Park and adjacent areas. Three new Cherry trees provide healthy and young additions to the park's collection. Finally, newly planted seasonal flowers add to the color of the Benjamin Franklin Parkway.

#### *Pavilion*

The perimeter walls of the pavilion are designed to provide the maximum amount of transparency and consist of a series of fixed and operable glass windows and doors with supporting piers in between. The doors and windows will be pre-finished extruded aluminum frame and clear glass (single pane) and the piers will be similar pre-finished metal covering the structural steel framing members. A central window will incorporate an electronic screen providing images and information about cultural exhibitions and educational activities along the Parkway and about Fairmount Park. Masonry, concrete or natural stone materials may be used form an 8 inch base to the walls. The color will be patina-green, to coordinate with the color of the light poles along the Parkway. Door and window hardware and metal accessory trim will be brushed stainless steel or "pewter" finish.

The hipped roof will be metal standing seam, either aluminum or steel, with manufacturer's pre-finish, and the fascia at the edge of both the hipped and the lower projecting eave will match. The ornamental metal at the ridge of the hipped roof will be custom-cut water-jet in a shape suggesting a series of leaves (referencing the leaf in the Fairmount Park logo). The

color will be green, based on the manufacturer's standard coil-coat "copper patina" color. The underside of the eave (soffit) will be smooth exterior plaster, white or off-white.

Rest room and storage room(s) will be full-height walls. These will be unit masonry, either brick or a pre-cast unit with a limestone appearance.

The interior sides of the windows and door frames will match their exterior color. Interior wall surfaces will be gypsum wall board, painted or wall covering, light mocha color. Counter top and counter front will be natural wood trim with plastic laminate or solid surface material. Interior doors and frames will be painted metal, green or mocha color.

The café floor will be color-stained concrete with a clear "lacquer" sealant. The ceiling will be painted gypsum wall board, white or off-white.

The floor and portions of walls of the interior restroom will be porcelain ceramic tile. Other wall surfaces will be painted GWB or painted masonry. Plumbing fixtures will be white; accessories will be stainless steel.

# City of Philadelphia

BILL NO. 070077 continued

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on March 22, 2007. The Bill was Signed by the Mayor on April 12, 2007.



Patricia Rafferty  
Chief Clerk of the City Council