

# City of Philadelphia



(Bill No. 071085)

## AN ORDINANCE

Authorizing the President of the Fairmount Park Commission and the Executive Director of Fairmount Park, on behalf of the City of Philadelphia, to enter into a lease with the Overbrook Park Civic Association (“OPCA”) under which the City would lease Rose Recreation Center and appurtenant grounds and facilities to OPCA to occupy and maintain and use to operate programs benefiting the community, under various provisions.

### *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 authorized by this Ordinance to enter into a lease (“Lease”) with the Overbrook Park Civic Association (“OPCA”), a non-profit corporation, under which the City would lease Rose Recreation Center and appurtenant grounds and facilities to OPCA to occupy and maintain and use to operate programs benefiting the community, subject to the provisions set forth in the Lease.

**SECTION 2.** The Lease shall be substantially in the form set forth in Exhibit A to this Ordinance. The City Solicitor is authorized by this Ordinance to include in the Lease all provisions that the City Solicitor deems necessary or appropriate to protect the interests of the City and that are consistent with the Lease as set forth in Exhibit A.

**SECTION 3.** The Chief Clerk of City Council is directed to keep on file and make available to the public for inspection during regular office hours the exhibit referred to in this Ordinance.

## LEASE AGREEMENT

This Lease Agreement (“**Lease**”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_ 2007 (“**Commencement Date**”), between the **City of Philadelphia**, acting through its **Fairmount Park Commission** and its **Recreation Department** (collectively, the “**City**” or “**Landlord**”) and the **Overbrook Park Civic Association**, an unincorporated non-profit association, with an address and principal place of business at 7300 City Avenue, Philadelphia, Pennsylvania 19151.

### Background

**A.** Rose Recreation Center (“**Premises**”), located at 7500 Lansdowne Avenue, Philadelphia, PA, is under the jurisdiction of the Fairmount Park Commission (“**Commission**”). With the agreement of the Commission, the Recreation Department manages the Premises. The Premises include a building (“**Building**”) and certain abutting land (“**Land**”) and recreational facilities that together comprise the entire Rose Recreation Center, and are more particularly described in **Exhibit A**, which is attached to and part of this Lease.

**B.** Tenant represents and warrants that it was organized for the purpose of improving the quality of life for the residents and businesses of the Overbrook Park section of the City.

**C.** As an inducement for the City to enter into this Lease, Tenant represents and warrants that it intends to maintain the Premises, and to operate in the Premises the “**Programs**” described in **Exhibit B**, which is attached to and part of this Lease.

**D.** Tenant desires to lease the Premises from the City, and City desires to lease the Premises to Tenant.

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

### DEFINITIONS

In this Lease, the words and phrases listed below are defined as follows:

“**Additional Rent**” has the meaning given it in Section 4.2.

“**Alteration**” and “**Alterations**” have the meaning given them in Section 6.1.1.

“**Applicable Law**” and “**Applicable Laws**” mean all present and future federal, state, and municipal laws, ordinances, codes, notices, orders, rules, regulations, and requirements relating to the Premises, this Lease, Tenant, the Programs, Contractors, and all subtenants. Applicable Law and Applicable Laws include but are not limited to: (1) 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.*, (2) all laws that govern or regulate the use, presence, treatment, and disposal of hazardous substances and environmental

contamination, (3) the Philadelphia Home Rule Charter and the Philadelphia Code, and (4) all laws and regulations related to fire suppression mechanisms and plans.

“**Assessments**” has the meaning given it in Section 5.2.

“**Books and Records**” has the meaning given it in Section 14.1.

“**Building**” has the meaning given it in Background paragraph A and Exhibit A.

“**City**” means the City of Philadelphia, its officials, officers, employees, departments, boards, commissions, agents, representatives, successors and assigns.

“**Commencement Date**” has the meaning given it in Section 3.1.

“**Construction Term**” has the meaning given it in Section 3.1.

“**Contractors**” means all contractors, consultants, and professionals hired by Tenant (including all subcontractors of them) to design, plan, or perform any Maintenance, Repairs, or Alterations, or who otherwise perform work or services in connection with this Lease.

“**Corporate Documents**” means Tenant’s:

- (1) articles of incorporation or other articles of its organization,
- (2) bylaws,
- (3) (if Tenant is a non-profit corporation) letter from the United States Internal Revenue Service certifying Tenant’s status as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code,
- (4) a certification by Tenant’s corporate secretary that Tenant’s Board of Director’s passed a resolution authorizing Tenant’s officers to execute this Lease and that such resolution is effective and unmodified as of the Commencement Date, and
- (5) all other documents requested by the City.

“**Designated Improvements**” has the meaning given it in Section 18.2.1.

“**Event of Default**” has the meaning given it in Section 17.1.

“**Executive Director**” means the Executive Director of Fairmount Park.

“**Food and Beverage Operations**” means the provision, distribution, or sale of food and beverages, or either of them, on any part of the Premises by Tenant or by a third party under contract with the Tenant. Food and Beverage Operations include but are not limited to catered events, the placement and maintenance of food or beverage vending machines, or any other means of distributing or selling food to persons on the Premises.

“**Improvements**” has the meaning given it in Section 6.1.2.

“**Initial Term**” has the meaning given it in Section 3.2.

“**Insurance**” has the meaning given it in Section 9.1.

“**Land**” has the meaning given it in Background paragraph A and Exhibit A.

“**Landlord**” means the City.

“**Maintain**” and “**Maintenance**” have the meaning given them in Section 7.0.1.

“**Material Destruction**” has the meaning given it in Section 11.1

“**Notice**” and “**Notices**” have the meaning given them in Section 19.1.1.

“**Partial Destruction**” has the meaning given it in Section 11.2.

“**Premises**” has the meaning given it in Background paragraph A and Exhibit A.

“**Programs**” has the meaning given it in Background paragraph C and Exhibit B.

“**Public Property Commissioner**” means the Commissioner of the City of Philadelphia Public Property Department.

“**Recreation Commissioner**” means the Commissioner of the City of Philadelphia Recreation Department.

“**Releasing Parties**” has the meaning given it in Section 10.4.

“**Renewal Term**” has the meaning given it in Section 3.3.

“**Rent**” has the meaning given it in Section 4.1.

“**Repair**” and “**Repairs**” have the meaning given them in Section 7.0.2.

“**Tenant**” means the Tenant defined in the introductory paragraph and its directors, officers, employees, agents, representatives, successors, and assigns.

“**Term**” has the meaning given it in Section 3.4.

**ARTICLE 1**  
**PREMISES; CONDITION**

**1.1** Lease. Commencing as of the Commencement Date, City leases to Tenant and Tenant leases from City, the Premises, subject to the provisions of this Lease.

**1.2 Premises Owned By City.** At all times during the Term of this Lease, the Premises are and will remain owned by the City of Philadelphia. Nothing contained in this lease creates, grants, or gives to Tenant any legal title, easement or other interest in the Premises other than a leasehold.

**1.3 Tenant Accepts Premises “AS IS”.** Tenant accepts the Premises, including all improvements on the Premises, without any representation or warranty from the City, and in their “AS IS” condition, including without limitation:

1. the zoning applicable to the Premises,
2. all surface and subsurface conditions of the Premises,
3. the present uses and non-uses of the Premises, and
4. all latent and patent defects and hazards.

**1.4 Tenant Has No Recourse to City.** Without limiting Section 1.3 above, Tenant agrees that it will have no recourse to City as to any of the following:

1. title to the Premises,
2. encumbrances, agreements, and restrictions affecting the Premises or use of the Premises,
3. conditions in, on, or about the Premises,
4. the nature or usability of the Premises, or the use or uses to which the Premises or any part of the Premises may be put, including but not limited to the suitability of the Premises for Tenant’s intended use under this Lease.

**1.5 Tenant Does Not Rely on City.** Tenant is leasing the Premises without reliance on any information that Tenant may have obtained from City. Tenant acknowledges that it has performed all inspections of the Premises as it has desired and has agreed to this Lease solely on the basis of Tenant’s own inspections.

**1.6 No Representation or Warranty By City.** Without in any way limiting Section 1.3 above, City makes no representation or warranty regarding compliance by the Premises with any Applicable Laws, 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, as any or all of the foregoing may be amended from time to time.

**1.7 No Financial Obligation On City.** **Despite any other provision of this Lease, this Lease does not impose any obligation on the City to appropriate or spend money at any time for any reason.**

## **ARTICLE 2**

### **USES REQUIRED, PERMITTED, AND PROHIBITED**

**2.1** Uses Required: General. Tenant must occupy and use the Premises, or must cause the Premises to be occupied and used, on a year-round basis, for the following purposes only:

1. to operate Tenant's Programs;
2. to perform and make Alterations of and to the Premises in strict accordance with Article 6 below;
3. to Maintain and Repair the Premises in strict accordance with Article 7 below; and
4. to issue licenses or permits for third parties to use some or all of the Premises from time to time, subject to the provisions of this Lease; and
5. for bona fide fundraising events to support maintenance, repair, and replacement of Improvements on the Premises and operation of Tenant's Programs.

**2.2** Use Required: Public Use of the Premises. At all times during the Term, during the times of day when the City's recreation centers are generally open for public use and Tenant is not using the Premises, or any part of the Premises, to conduct Tenant's Programs, Tenant shall permit members of the public to use those portions of the Premises not being used by Tenant.

**2.3** Tenant Responsible for Safe Use of Premises. Tenant shall provide or contract for all services and equipment necessary and desirable to safely occupy, use, repair, maintain, and operate the Premises, to operate Tenant's Programs, and to fulfill Tenant's obligations under this Lease. Tenant assumes sole and complete responsibility and liability for using the Premises in unsafe condition.

**2.4** Fees. Tenant may impose reasonable charges and fees for persons to use the Premises or to participate in Tenant's Programs. Tenant shall use all charges and fees, however characterized, that it receives in connection with its operation of the Premises for maintenance, repair, or replacement of the Premises or for operation of Tenant's Programs.

**2.5** Food and Beverages. Subject to Section 2.7.2 below, Tenant may permit Food and Beverage Operations on the Premises solely for bona fide fundraising by Tenant. Tenant may manage Food and Beverage Operations either directly or under a contract. Tenant must cause all Food and Beverage Operations on the Premises to be duly licensed by the City of Philadelphia under Applicable Laws. All revenue received by Tenant from all Food and Beverage Operations must be used or held by Tenant for maintenance, repair, or replacement of the Premises or for operation of Tenant's Programs.

**2.6** Compliance With Applicable Laws. Tenant at its sole cost and expense shall promptly comply with all Applicable Laws in its activities under this Lease and in its Maintenance, Repair, Alteration, and operation of the Premises. Tenant acknowledges that the condition of the Premises may not presently comply with all Applicable Laws. Tenant further acknowledges and agrees that it is solely Tenant's responsibility, at Tenant's sole cost and expense, to make Alterations and Repairs to the Premises in accordance with this Lease to cause the Premises to comply with all Applicable Laws.

**2.7** Uses Prohibited: Violation of Applicable Laws; Alcoholic Beverages; Commercial Activities, Etc.

1. Tenant shall not use or permit the use of the Premises in violation of any Applicable Laws or in violation of this Lease. Tenant shall not permit any act to be done or any condition to exist in, on, or about the Premises which may: (1) be dangerous, (2) in law constitute a public or private nuisance, or (3) make void or voidable any insurance then in force with respect to the Premises or any part of the Premises.

2. 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.

3. Tenant shall not permit all or any part of the Premises to be used in any manner as might tend to impair the City's title to all or any part of the Premises. Tenant must not permit any part of the Premises to be used in any 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.

4. Except as otherwise permitted under this Lease, Tenant shall not permit any commercial activities on the Premises.

**2.8** Signs. Tenant shall not place, erect, hang, or paint any sign in, on, or about the Premises without the prior approval of the City of Philadelphia Art Commission.

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

**3.1** Commencement Date. The "**Commencement Date**" of this Lease is the date set forth in the introductory paragraph.

**3.2** Initial Term. The "**Initial Term**" of this Lease shall begin on the Commencement Date and expire at 11:59 p.m. on the day before the first anniversary of the Commencement Date.

**3.3** Renewal Term.

1. Following expiration of the Initial Term, upon annual approval by the City, this Lease will renew for up to two additional one-year periods (each one-year period, a "**Renewal Term**"), commencing immediately following expiration of the Initial Term or expiration of the preceding Renewal Term and expiring at 11:59 p.m. the day before the first anniversary of the first Renewal Term or the second Renewal Term, as the case may be.

2. Despite Section 3.3.1, this Lease will not renew for any Renewal Term, or not for the second Renewal Term, if Tenant fails to satisfy all the conditions below:

**A.** Throughout the Initial Term and first Renewal Term, Tenant must not have committed an Event of Default, or any act or omission that with due notice from the City and the passage of time would become an Event of Default; and

**B.** Tenant must have implemented and operated its Programs diligently and in good faith throughout the Initial Term and the first Renewal Term.

**3.4** Term. As used in this Lease, the word “**Term**” means the Initial Term and all Renewal Terms, if any. All of Tenant’s obligations under this Lease shall continue through the date of expiration or earlier termination of the Term.

**ARTICLE 4**  
**RENT**

**4.1** Rent. For the Term, Tenant shall pay rent to the City of \$1.00 (“**Rent**”).

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

1. any and all sums which become due by reason of any default of Tenant or failure on Tenant’s part to strictly comply with the terms of this Lease;

2. and any and all damages, costs, and expenses which City may suffer or incur by reason of any default of Tenant or failure on Tenant’s part to strictly comply with the terms of this Lease;

3. 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 or users of the Premises; and

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

**ARTICLE 5**  
**UTILITIES; TAXES**

**5.1** Utilities. Tenant shall promptly pay all charges and fees when and as they become due for all public utilities and utility service used at the Premises, including but not limited to gas, steam, heat, light, electricity, telephone, sewer rents, water meter and water charges. Tenant shall, at its sole cost and expense, promptly pay all charges and fees when and as they become due for new conduits, cables, or other means of providing or improving utility services to the Premises. Without limiting the requirements set forth above in this section 5.1, Tenant is solely liable for all late charges, interest, penalties, and fees arising from Tenant’s failure to promptly pay all charges and fees imposed by any provider of utility service to the Premises. The City is not required in any manner to provide utilities or utility service to the Premises. The City is not liable for any interruption in utilities or utility service to the Premises.

**5.2** Taxes. Tenant shall promptly pay all taxes, assessments, levies, operating expenses, license and permit fees, and all other charges or burdens of whatever kind and nature (collectively, “**Assessments**”) related to the Premises or Tenant’s activities on the Premises. Without limiting the requirements set forth above in this section 5.2, Tenant shall be solely liable for all late charges, interest, penalties, and fees arising from Tenant’s failure to promptly pay all Assessments related to the Premises or Tenant’s activities on the Premises.



**5.3** City Not Obligated to Pay. The City is not obligated at any time during the Term to pay for any utility services of any kind provided to Tenant or to the Premises or related to Tenant's activities on the Premises. The City is not obligated at any time during the Term to pay any Assessments related to Tenant, the Premises, or Tenant's activities on the Premises.

## **ARTICLE 6**

### **ALTERATIONS AND IMPROVEMENTS**

#### **6.1** Definitions: Alterations and Improvements.

**1.** As used in this Lease, the words "**Alteration**" and "**Alterations**" mean any and all work in, on, or to the Premises or any part of the Premises that is capital in nature, including but not limited to construction, changes, additions, renovations, and replacements upon, in, or to capital elements of the Premises or any part of the Premises and other work typically characterized as capital in nature. Alteration and Alterations include but are not limited to all changes to the structure, supporting walls, foundation, roof, windows, and building systems of the Premises or any part of the Premises.

**2.** In this Lease, the word "**Improvements**" means all existing and future structures and physical developments in, on, and about the Premises. In addition, unless otherwise specified in this Lease, all references in this Lease to the Premises include the Improvements. Separate references to the Premises and Improvements, or to the Premises by itself, may not be deemed to exclude the Improvement from the meaning of the Premises.

**6.2** Tenant Must Not Make Alterations Without Prior City Approval. Except as expressly provided in this Lease, Tenant shall not make or cause any Alterations, without the prior review and written approval of the City. As part of the City's prior review, the Tenant shall submit to the City detailed plans and specifications for the proposed Alterations and all additional information requested by the City. The City's approval of any Alterations may be conditioned upon a requirement that Tenant provide the City with a performance and payment bond satisfactory to the City in all respects and upon other requirements the City deems necessary or prudent to protect the interests of the City. The City will endeavor to review Tenant's request for approval of proposed Alterations within thirty (30) days of receipt of Tenant's request.

**6.3** Tenant Must Perform Approved Alterations. Following City's approval of any proposed Alterations, Tenant's plans and specifications, as approved by the City, for the Alterations automatically become part of this Lease and Tenant shall make, or cause to be made, the approved Alterations:

- 1.** at Tenant's sole cost and expense,
  - 2.** diligently,
  - 3.** in a good and workman-like manner,
  - 4.** in strict accordance with the plans and specifications approved by the City,
- and
- 5.** in compliance with all Applicable Laws.

**6.4** Alterations Become Part of Premises. Except as expressly provided otherwise by City in any consent or approval required under this Article 6, all Alterations performed on the Premises or any of the Improvements shall, upon completion, become part of the Premises and the property of the City; provided, however, Tenant may remove its trade fixtures from the Premises at the expiration or earlier termination of this Lease in accordance with Section 18.2 below and Section 6.5 below.

**6.5** Fixtures. Tenant shall not install any fixtures in or on the Premises or any of the Improvements without the prior written approval of the City. Upon the expiration or earlier termination of this Lease, Tenant shall:

1. promptly remove any and all of its trade fixtures;
2. restore any damage to the Premises or any of the Improvements caused by the installation or removal of the trade fixtures; and
3. return the Premises to City in good condition and broom clean.

## ARTICLE 7

### MAINTENANCE, REPAIRS, AND REPLACEMENTS

**7.0** Definitions: Maintenance and Repair.

1. In this Lease, the words “**Maintain**” and “**Maintenance**” mean all maintenance that is necessary or prudent to keep the Premises safe, in good condition, in compliance with Applicable Laws, and in appropriate condition for the uses contemplated by this Lease. Maintain and Maintenance include but are not limited to work that is routine, preventive, ordinary, extraordinary, foreseen, unforeseen, capital in nature, or otherwise, including but not limited to Alterations.

2. In this Lease, the words “**Repair**” and “**Repairs**” mean all repairs, replacements, and renewals that are necessary or prudent to keep the Premises safe, in good condition, in compliance with Applicable Laws, and in appropriate condition for the uses contemplated by this Lease. Repair and Repairs include but are not limited to work that is routine, ordinary, extraordinary, foreseen, unforeseen, capital in nature or otherwise, including but not limited to Alterations.

**7.1** Tenant Obligated to Maintain and Repair the Premises. At all times during the Term, Tenant shall Maintain and Repair the Premises at its sole cost and expense and in accordance with the terms of the Lease. Tenant’s obligation to Maintain and Repair the Premises includes the structural and nonstructural parts of the Improvements and their plumbing, mechanical, and fire suppression systems, roofs, exterior walls, interior walls, windows, foundations, water supply systems, sewage disposal systems, and heating, ventilation, air conditioning and electrical systems.

**7.2** City Not Obligated to Maintain or Repair the Premises. At all times during the Term, the City is not obligated to Maintain or Repair the Premises or any part of the Premises. In addition, at all times during the Term, the City is not obligated to pay for any Maintenance or Repair of or to the Premises or any part of the Premises. At all times during the Term, the City is not required to furnish any services or facilities to Tenant, the Premises, or any part of the

Premises. Tenant expressly waives any and all rights it may have under Applicable Laws to Maintain or Repair all or any part of the Premises at the expense of the City.

**7.3** Maintenance and Repair Alterations. All Maintenance and Repairs that constitute Alterations are subject to the requirements of Article 6 above. 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 all Maintenance and Repairs necessary to secure the Premises and prevent injury or property damage, but Tenant must at its very first opportunity inform the City about such Maintenance or Repair and must obtain the City's prior approval for any additional future Maintenance or Repairs that may be necessary or prudent.

**7.4** Exterior Maintenance and Repairs; Litter and Snow; Graffiti; Turf and Trees.

1. Tenant shall promptly Maintain and Repair all exterior portions of the Premises, including but not limited to all ball fields, courts, playgrounds, pools, picnic areas and facilities, driveways, sidewalks, curbs, and parking areas, and all areas adjoining the Premises.

2. Tenant shall promptly keep the exterior portions of the Premises in clean and orderly condition, free of dirt, garbage, rubbish, snow, ice, overgrowth, and unlawful obstructions.

3. Tenant shall remove graffiti from, or cover graffiti on, the Premises within five days of its application, or such shorter time as may be required by Applicable Law.

4. Tenant shall promptly Maintain the lawn and field area in and about the Premises, including but not limited to proper maintenance of all trees and shrubs growing on the Premises. Tenant must not landscape any part of the Premises nor trim, prune, or remove any trees or shrubs on the Premises, however, without obtaining the prior written approval of the City arborist. Tenant must plant only species of flowers, vines, and other plantings that are native to the Philadelphia region.

**7.5** No Waste; Tenant Must Repair Damages. Tenant shall not cause or suffer any waste, damage, disfigurement or injury to the Premises. Tenant shall promptly Repair (or cause the Repair of) every injury or damage to the Premises caused by Tenant or any of its Contractors, licensees, invitees, or any other person, including but not limited to injury or damage caused by vandalism or malicious mischief and damage that is capital in nature.

**7.6** Security. Tenant shall take all necessary and prudent measures to keep the Premises safe and secure against break in, fire, and other hazards. City is not obligated to provide any security for the Premises. Tenant shall promptly pay any tax or levy imposed by any governing authority under Applicable Laws in connection with the maintenance of security and fire alarm and fire suppression systems in, on, or about the Premises.

**7.7** City's Option to Maintain and Repair.

1. The City may, in its sole discretion, perform any or all Maintenance and Repairs that may be necessary or prudent by reason of Tenant's failure to make any Maintenance or Repairs. Nothing in this Lease, however, creates or implies any duty on the part of the City to make any Maintenance or Repairs, whether capital in nature or otherwise.

2. The City's performance of any Maintenance or Repairs does not waive any default by Tenant in failing to perform the Maintenance or Repair.

3. If the City elects to perform any Maintenance or Repairs, the City will not in any event be liable to Tenant for inconvenience, annoyance, disturbance, or other damage arising from the Maintenance or Repairs performed by the City or by bringing materials, supplies and equipment onto the Premises during the course of any Maintenance or Repairs.

4. If the City elects to perform any Maintenance or Repairs, then Tenant shall promptly pay the City as Additional Rent the actual cost of any and all Maintenance and Repairs performed by City due to Tenant's failure to perform the Maintenance or Repairs, plus an administrative fee equal to 10% of the City's actual cost of the Maintenance and Repair.

## **ARTICLE 8** **NO MECHANICS' LIENS**

**8.1** Waivers of Mechanics' Liens. Tenant waives its right to have filed against the Premises any mechanic's or materialman's lien.

**8.2** No Consent by City to Mechanics or Materialman's Lien. Nothing contained in this Lease constitutes 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, Maintenance, Repair or other work to the Premises or any part of the Premises. Nothing contained in this Lease gives 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 City in the Premises or any part of the Premises. Tenant and all of its Contractors are notified by this Section 8.2 that the City expressly does not consent to the filing of any lien against the interest of the City in the Premises or any part of the Premises.

## **ARTICLE 9** **INSURANCE**

**9.1** General. Throughout the Term, Lessee shall procure and maintain, at its sole cost and expense, insurance of the types and minimum limits of coverage specified below (collectively, "**Insurance**"). Tenant shall procure all Insurance from reputable insurers who are acceptable to the City and authorized to do business in the Commonwealth of Pennsylvania. Tenant shall cause all Insurance, except the Professional Liability insurance, to be written on an "occurrence" basis and not a "claims-made" basis.

**9.1.1.** Workers' Compensation and Employers' Liability

- a.** Workers Compensation – Statutory Limits;
- b.** 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;
- c.** Other states endorsement including Pennsylvania.

**9.1.2. General Liability Insurance**

**a.** 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 \$100,000 fire legal liability.

**b.** Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors; employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations) liability; and sexual abuse/molestation liability coverage.

**9.1.3. Commercial Automobile Liability Insurance**

**a.** Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury and property damage liability;

**b.** Coverage: Owned, hired and non-owned vehicles.

**9.1.4. Professional Liability Insurance (if applicable)**

**a.** Limit of Liability: \$1,000,000 per occurrence with a deductible not to exceed \$50,000;

**b.** Coverage: errors and omissions;

**c.** Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences arising out of the performance of services required under the 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 the expiration of the Contract.

**9.1.5. Property Insurance.**

"All Risk" property insurance 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.

**9.1.6. Umbrella Liability Insurance**

At limits totaling \$5,000,000 per occurrence when combined with insurance required under 1, 2, and 3 above.

**9.2 Additional Insurance.** Throughout the Term Tenant shall promptly obtain and maintain Insurance against such other hazards, risks or perils, and in such amounts as reasonably may be requested by the City and as at the time are customarily insured against with respect to improvements similar in character, size, general location, use and occupancy to the Premises.

**9.3 Tenant's Contractors' Insurance.** Throughout the Term, Tenant shall cause all of its Contractors to promptly secure and maintain sufficient insurance of the types and limits set forth above, and as otherwise reasonably required by the City.

**9.4 City Must Be Named as Additional Insured, Loss Payee.** Tenant shall cause the City of Philadelphia to be named as additional insured on all policies required under this Lease

except the Workers Compensation, Employers' Liability, Property Insurance, and Professional Liability policies. Tenant shall cause the City of Philadelphia to be named as a loss payee on the Property Insurance policy. Tenant shall cause all Insurance policies to include an endorsement stating that the coverage afforded the City as additional insured is primary to any other coverage available to the City.

**9.5** Certificates of Insurance. Tenant shall cause certificates of insurance evidencing the required Insurance coverage to be submitted to (1) the Public Property Department at 1401 JFK Boulevard, Municipal Services Building – 10<sup>th</sup> Floor, Philadelphia, PA 19102-1677, Attention: Commissioner, and (2) the City of Philadelphia Office of Risk Management, One Parkway Building – 14<sup>th</sup> Floor, 1515 Arch Street, Philadelphia, PA 19102, Attention: Risk Manager. Tenant shall cause the certificate of insurance to be delivered as provided above on or before the execution date of this Lease. Tenant shall furnish, or cause its insurers to furnish, certified copies of the original policies of all Insurance required under this Lease at any time within ten (10) days after written request by the City.

**9.6** Insurance Not A Limitation. The types and amounts of Insurance required in this Article 9 do not modify, limit or reduce Tenant's indemnifications of the City under this Lease; nor do they limit the Tenant's liability under this Lease to the limits of the policy(ies) of Insurance.

**9.7** Notice of Change, Cancellation, Non-Renewal, or Lapse. Tenant shall cause all insurance policies to 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, not renewed, or scheduled to expire or lapse. At least ten (10) business days prior to the expiration of each policy, Tenant shall deliver, or cause to be delivered, to the City a certificate of insurance evidencing the replacement policy(ies) that must become effective immediately upon the termination of the previous policy(ies).

**9.8** City Not Limited In Proof of Damages. In the event Tenant fails to obtain and maintain the Insurance, or fails to cause its Contractors to obtain and maintain the Insurance, the City is not limited in the proof of any damages that the City may claim against Tenant or any other person or entity to the amount of the premium or premiums not paid or incurred and that would have been payable upon such Insurance. Rather, the City is entitled to recover as damages for Tenant's failure 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.

**9.9** Additional Insurance. From time to time, but not more frequently than once every year, the City may, upon thirty (30) days prior notice to Lessee, reasonably adjust the amounts, types and deductibles of the Insurance coverage required under this Lease.

**9.10** Application of Insurance Proceeds. All insurance money paid on account of damage to or destruction of the Premises, less the actual cost, fees and expenses, if any, incurred in connection with the adjustment of the loss, may, at the election of the City, be applied to either (1) payment of the cost of the restoration, repairs, replacement, rebuilding or alterations, of the

Premises, including without limitation the cost of temporary repairs to the Premises pending the completion of permanent restoration, repairs, replacements, rebuilding or alteration of the Premises, or (2) removal of the Premises and restoration of the Premises to its condition prior to Lessee's entry onto the Premises subject to the Commissioner's reasonable satisfaction.

**9.11 Tenant Must Not Act in Manner That Voids or Suspends Insurance.** Tenant shall not do or permit any act, matter, or thing that causes or gives rise to, directly or indirectly, all or any of the Insurance to be voided or suspended, or that increase the risk or hazard of fire in or on the Premises.

**9.12 No Concurrent Insurance.** Tenant shall not obtain or maintain, or permit its Contractors to obtain or maintain, separate insurance that, (1) relates to the Premises and is concurrent in form or contributing, in the event of loss, with the Insurance, or (2) increase or permit to be increased the amounts of any then-existing insurance relating to the Premises by securing an additional policy or policies without including the City as additional insured. Tenant must immediately notify the City whenever Tenant or its Contractors obtain such separate insurance, and Tenant must deliver or cause its Contractors to deliver to the City certificates of insurance in accordance with Section 9.5 above and, promptly following request by the City, certified copies or duplicate originals of such policies.

## **ARTICLE 10**

### **LIABILITY FOR PREMISES; INDEMNIFICATION; RELEASE**

**10.1 Tenant Has Exclusive Care Custody and Control of Premises.** Throughout the Term of this Lease, subject only to City's title to the Premises, Tenant has exclusive care, custody, and control of the Premises. From and after the Commencement Date, Tenant is fully and solely responsible and liable for the condition, construction, improvement, Maintenance, Repair, operation, and management of and to the Premises, all Improvements on the Premises, and all Alterations of and to the Premises.

**10.2 Indemnification.** Tenant shall promptly indemnify, defend and hold harmless the City from and against any and all claims, liabilities, losses, suits, actions, damages, and expenses (including but not limited to attorneys' fees and litigation costs), 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: (1) any act or omission of Tenant or Tenant's Contractors, licensees, guests and students, and Tenant's subtenants (if any); (2) Tenant's use, operation, occupancy, Alteration, Maintenance, or Repair of the Premises or any part of the Premises; or (3) Tenant's exercise of any right and or performance of any obligation under or pursuant to this Lease; (4) the condition of the Premises or any part of the Premises. This Section 10.2 and Tenant's obligations under it survive the expiration or termination of this Lease.

**10.3 Defense.** In case any action or proceeding is brought against the City relating to any matter for which Tenant has indemnified the City, then upon written notice from the City, Tenant shall, at its sole cost and expense (including without limitation attorneys fees and

litigation costs), resist or defend such action or proceeding by counsel approved by the City Solicitor of the City in writing; except that (1) no approval of counsel is required in each and every instance where the claim or proceeding is resisted or defended by counsel of an insurance carrier obligated to so resist or defend such claim or proceeding, and (2) the City may engage at its expense its own counsel to participate in the defense of any such claim or proceeding. Without limiting the generality of Section 22.6, the provisions of this Article 10 will survive the expiration or termination of this Lease.

**10.4 Release.** In consideration for the rights granted to Tenant under this Lease, Tenant, for itself and its officers, employees, representatives, agents (collectively, the “**Releasing Parties**”), and any person claiming by, through, or under Tenant or any of the Releasing Parties, remises, quitclaims, releases and forever discharges, the City (acting officially or otherwise), from any and all, and all manner of, claims, liabilities, actions and causes of action, suits, and demands whatsoever in law or in equity that Tenant or any of them may have against the City relating in any way whatsoever, directly or indirectly, to (1) this Lease and or the Premises; and or (2) the existence, condition, operation, use or occupancy of any part(s) of the Premises by Tenant. Tenant voluntarily and knowingly assumes all risk of loss, damage and injury, including death, that may be sustained by Tenant or any person claiming by, under or through Tenant, and the public in general, in connection with the Premises. This Section 10.4 and Tenant’s releases, and waivers under it survive the expiration or termination of this Lease.

## ARTICLE 11 **DAMAGE BY FIRE OR OTHER CASUALTY**

**11.1 Material Destruction.** If in the City’s judgment the Premises have been substantially or totally destroyed by fire, explosion, windstorm, tornado or other casualty, or if the Premises should be damaged so that, in the City’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 sixty (60) calendar days after written notice by Tenant to City of the destruction (“**Material Destruction**”), then the City may at its option terminate this Lease as of the date of the Material Destruction by delivering to Tenant written notice of termination, and upon Tenant’s receipt of the City’s termination notice this Lease will absolutely cease and terminate and the parties shall be relieved of all future liabilities.

**11.2 Partial Destruction.** If the damage by fire, explosion, windstorm, tornado or other casualty can, in the sole judgment of the City, be reasonably rebuilt or repaired within 90 calendar days from the date of the written notification by Tenant to City of the destruction (“**Partial Destruction**”), the City may at its option terminate this Lease or continue this Lease for the permitted use by giving written notice to the Tenant. If City elects to continue the Lease, Tenant shall promptly repair the Partial Destruction. In accordance with Section 9.4 above, the City will hold the insurance proceeds from the Property Insurance required under Section 9.1 above. The City will release such Property Insurance proceeds to Tenant or Tenant’s Contractors upon Tenant’s presentation to the City of invoices for completed Repairs of the Partial Destruction, or at such earlier time as the City determines in the City’s discretion. Tenant shall apply the Property Insurance proceeds to cover losses sustained from the Partial



Destruction. Tenant is obligated to continue this Lease if City so chooses following any Partial Destruction.

**ARTICLE 12**  
**CONDEMNATION**

**12.1 Condemnation.** If a portion of the Premises are taken under condemnation proceedings or by eminent domain, then the City may, at City's sole discretion, terminate this Lease as of the date when the taking becomes final and unappealable or continue this Lease as to the remaining portion of the Premises. If all the Premises are taken under condemnation proceedings or by eminent domain, then this Lease shall terminate as of the date the taking becomes final and unappealable.

**12.2 Compensation.** Tenant agrees that the compensation awarded in or by reason of the condemnation of some or all the Premises are the property of and shall be paid first to the City as full compensation for the City's interests taken by the condemnation. Any remaining award shall be paid secondarily to Tenant as compensation for Tenant's interest taken by the condemnation.

**12.3 Tenant's Moving Expenses.** Notwithstanding the provisions of Section 12.2 above, Tenant may make a claim against the condemnor for moving and related expenses (if applicable) that are payable to tenants under Applicable Laws.

**ARTICLE 13**  
**NO SUBLEASES OR ASSIGNMENTS**

**13.1 Sublease Prohibited.**

**1.** Tenant shall not sublease, assign, or transfer this Lease, either in whole or in part, or mortgage, pledge or otherwise encumber this Lease or Tenant's leasehold estate in the Premises, without on each occasion first obtaining the prior written consent of Executive Director, which the Executive Director may withhold in his or her sole discretion and for any reason or no reason.

**2.** If the Executive Director approves any sublease, assignment, transfer, or other encumbrance of this Lease by Tenant, then Tenant will, nevertheless, remain liable for the performance of its agreements and obligations under this Lease and Tenant shall cause each subtenant, assignee, or transferee, as the case may be, to execute and deliver to the City an assumption of liability agreement, in form satisfactory to the Executive Director, including, without limitation, ratification of and agreement to be bound by all of the provisions of this Lease. If any sublessee, assignee, or transferee fails or refuses to execute and deliver an assumption of liability agreement, such sublessee, assignee, or transferee will nevertheless remain liable to the City as set forth in this Lease.

**13.2 Consent to Sublease Does Not Waive Compliance.** Any consent by the Executive Director to a sublease, assignment, or transfer of this Lease by Tenant is not a waiver of Tenant's

strict future compliance with the provisions of this Article 13 or a release of Tenant from Tenant's obligation to fully perform the provisions of this Lease.

#### ARTICLE 14

#### **TENANT'S RECORDS; ANNUAL REPORTS; CORPORATE DOCUMENTS**

**14.1** Books and Records. Tenant shall keep complete and accurate books of accounts, financial records, and other records (collectively, "**Books and Records**") within the City of Philadelphia relating to Tenant's use and occupancy of the Premises and operation of its Programs. Tenant shall maintain its Books and Records in accordance with generally accepted accounting principles consistently applied.

**14.2** City May Audit. The City, or its duly authorized representatives, may inspect and audit all of Tenant's Books and Records and Tenant's affairs at all reasonable times at the Premises, the City's offices, or other place the City may reasonably require. Tenant shall promptly make its Books and Records available to the City for inspection at the City's reasonable convenience following request by the City.

**14.3** Tenant's Reports. On or before 60 days following each anniversary of the Commencement Date during the Term, and on or before 60 days following the expiration or earlier termination of this Lease, Tenant shall submit to the City a report that includes (1) a description of the activities undertaken by Tenant on or with respect to the Premises, (2) a detailed income and expenses statement for Tenant's most recently completed fiscal year, (3) audited annual financial statements of Tenant, and (4) all tax returns filed by Tenant. Tenant must also promptly submit to the City all supplemental reports, documents, records, and other information that the City may require.

**14.4** Tenant's Corporate Documents. Tenant's represents and warrants that copies of its Corporate Documents are attached as **Exhibit C** to this Lease and that the copies are true, correct, complete and current as of the Commencement Date.

#### ARTICLE 15

#### **PHILADELPHIA HOME RULE CHARTER AND PHILADELPHIA CODE REQUIREMENTS: NON-INDEBTEDNESS; NON-DISCRIMINATION; MACBRIDE PRINCIPLES ON BUSINESS WITH NORTHERN IRELAND**

**15.1** Non-Discrimination. This Lease is entered into under the terms of the City of Philadelphia Home Rule Charter. In Tenant's use of the Premises and exercise of its rights under this Lease, Tenant shall not discriminate or permit discrimination against any person because of race, color, religion, national origin, sex, sexual orientation, or gender identity. In the event of such discrimination, and without limiting the City's remedies under this Lease for an Event of Default under this Lease by Tenant, the City may terminate this Lease immediately.

**15.2 Non-Indebtedness.** By executing this Lease, Tenant represents and warrants that Tenant and Tenant's parent company(ies), subsidiary(ies), and affiliate(s), if any, and each of Tenant's directors and officers, are not currently indebted to the City 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. In addition to any other rights or remedies available to the City under this Lease, at law and or in equity, Tenant acknowledges that any breach or failure to conform to this certification may, if the 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 is be liable for all excess costs and other damages, including but not limited to those set forth in Article 17 of the Lease, resulting from the termination). Nothing set forth in this Article must limit the generality of Article 17.

**15.3 Non-Indebtedness of Tenant's Contractors.** Tenant shall cause it Contractors to be bound by the provision below (for example, by inserting the provision into a written agreement between Tenant and Contractor). Tenant shall cooperate fully with the City in the City's exercise of the rights and remedies described below or otherwise available at law or in equity:

Contractor (or subcontractor, as the case may be) represents and certifies that contractor and contractor's parent company(ies) and subsidiary(ies) are not currently indebted to the City of Philadelphia ("City") and will not at any time during the "Term" of Tenant's Lease with the City 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. In addition to any other rights or remedies available at law or in equity, contractor 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 contractor will be liable for all excess costs and other damages resulting from the termination).

the "Fair Practices Ordinance" (codified in the Philadelphia Code, at Chapter 9-1100)

**15.4 Exclusionary Organizations.**

**1.** 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, religion, national origin or ancestry, constitutes, without limiting the generality of Article 17, a substantial breach of this Lease entitling the City to all rights and remedies provided in this Lease or otherwise available in law or equity.

2. Tenant agrees to include the immediately preceding paragraph, with appropriate adjustments for the identity of the parties, in all contracts and subcontracts that are entered into for work to be performed under this Lease.

3. 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. Tenant's failure to so cooperate is, without limiting the generality of Article 17, a substantial breach of this Lease entitling the City to all rights and remedies provided in this Lease or otherwise available in law or equity.

#### **15.5 Northern Ireland; MacBride Principles.**

1. In accordance with Section 17-104 of the Philadelphia Code, by executing this Lease Tenant represents and certifies that (1) 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, any investments, licenses, franchises, management agreements or operations in Northern Ireland and (2) 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.

2. In its use and occupancy of the Premises under this Lease, Tenant agrees that it will not use any supplier, Contractor, or consultant at any tier (1) who has (or whose parent, subsidiary, exclusive distributor or company affiliate has) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (2) who will provide products originating in Northern Ireland unless that supplier, Contractor, subconsultant has implemented the fair employment principles embodied in the MacBride Principles. Tenant must include the provisions of this Section 15.5, with appropriate adjustments for the identity of the parties, in all contracts, subcontracts, and supply agreements that are entered into in connection with this Lease.

3. Tenant agrees to cooperate with the City's Director of Finance in any manner that the Director of Finance deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of the Philadelphia Code. Tenant expressly understands and agrees that any false certification or representation in connection with this Section 15.5, and or any failure by Tenant or any of its suppliers, Contractors, or consultants to comply with the provisions of this Article is 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, Tenant acknowledges that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. Section 4904.

#### **15.6 No Prohibited Gifts to City Officials.**

1. Tenant and its Contractors shall not offer or give, directly or indirectly, anything of value to any official or employee in the Executive or Administrative branch of the City, including any gift, gratuity, favor, entertainment or loan, the receipt of which would violate Executive Order No. 002-04 issued by the Mayor of Philadelphia on August 12, 2004.

2. Any person who offers or gives anything of value to any City official or employee the receipt of which would violate Executive Order No. 002-04 shall be subject to

sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in particular City contract(s), to debarment, depending on the nature of the particular violation. The terms and duration of such sanctions shall be pursuant to such rules as the Procurement Commissioner promulgates with respect to contracts subject to competitive bidding, or as the Director of Finance promulgates with respect to all other contracts.

15.7 Financial Assistance and Disclosure of Political Contributions. Promptly following execution of this Lease, Tenant shall file all disclosures required by Applicable Laws relating to political contributions made by organizations that receive financial assistance from the City.

## ARTICLE 16

### **QUIET ENJOYMENT; CITY RIGHT TO ENTER AND INSPECT PREMISES**

**16.1 Quiet Enjoyment.** So long as Tenant (1) promptly pays the Rent, Additional Rent, and all other costs, expenses, charges, and fees required under this Lease within the respective times required for payment, and (2) strictly complies with all the provisions of this Lease and strictly observes and performs all covenants, terms, and conditions that this Lease requires Tenant to observe and perform, the Tenant may peaceably and quietly hold and enjoy the Premises for the Term without hindrance or interruption by the City or anyone lawfully claiming through City. Tenant's peaceable and quiet enjoyment of the Premises under this Section 16.1 is subject to all the provisions of this Lease, including but not limited to the City's right to enter and inspect the Premises provided in Section 16.2 below.

**16.2 City Right to Enter Premises.** Tenant shall permit the City to enter and traverse the Premises as a member of the public. Tenant shall also permit the City to enter the Premises at any time as may be necessary or prudent for City to perform its governmental functions. In addition, Tenant shall permit City, and any persons authorized by City, to enter all areas of the Premises, including but not limited to the Improvements, at all times between 9:00 a.m. and 8:00 p.m., for the purposes of, but not limited to:

1. inspecting the Premises in order to determine whether Tenant has complied or is complying with the provisions of this Lease;
2. carrying out any purpose necessary, incidental or connected to the performance of City's obligations or exercise of City's rights under this Lease;
3. making any Repairs or performing any Maintenance or other work on the Premises as provided in Article 7 above.

**16.3 Locks and Keys.** Tenant shall promptly give the Executive Director two copies of all keys and alarm security codes necessary to obtain access to the Premises. Tenant shall not change the locks or alarm security codes on or for the Premises without the prior approval of the Executive Director. If the Executive Director approves Tenant's request to change any locks or alarm security codes, then upon changing any such locks or alarm security codes Tenant shall promptly provide the Executive Director with three copies of the keys for the new locks and the new alarm security codes.

**ARTICLE 17**  
**DEFAULT BY TENANT; CITY'S REMEDIES**

**17.1** Events of Default. Tenant will commit an “**Event of Default**” under this Lease if:

1. Tenant fails to pay the Rent or to pay any Additional Rent within 10 days of the date the Rent or Additional Rent is due;
2. Tenant fails to strictly comply with the provisions regarding Tenant’s use of the Premises under Article 2 of this Lease;
3. Tenant fails to comply with any provision of this Lease, and Tenant fails to cure its default on or before 15 days after the City gives written notice to Tenant of the default;
4. Tenant either
  - a. files, or has filed against it, a petition under any federal or state statute of bankruptcy or for arrangement, composition, reorganization or other relief concerning its indebtedness,
  - b. makes an assignment for the benefit of creditors,
  - c. is adjudicated bankrupt or declared insolvent by the decree of a court of competent jurisdiction,
  - d. 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 continues unstayed and in effect for a period of sixty (60) days, or
  - e. admits in writing its inability to pay its debts generally as they become due, or
  - f. takes any action in contemplation of any of the foregoing;
5. Tenant or any subtenant at any time fails to strictly comply with Applicable Laws in any respect;
6. If Tenant is a non-profit corporation, Tenant’s status as a non-profit corporation under Section 501(c)(3) of the United States Internal Revenue Code is revoked; or
7. If Tenant is not legally incorporated in the Commonwealth of Pennsylvania and does not receive a letter from the United States Internal Revenue Service confirming Tenant’s status as a 501(c)(3) non-profit corporation before expiration of the Initial Term.

**17.2** City’s Remedies. If Tenant commits an Event of Default, then the City may do one or more of the following:

1. bring legal action to recover all Rent and Additional Rent;
2. declare the Lease immediately terminated and upon such termination Tenant must immediately vacate the Premises and remove Tenant’s property from the Premises in accordance with Article 18 below;
3. suspend the Lease and Tenant’s right to use some or all of the Premises;
4. bring legal action to repossess the Premises;
5. 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, fees, and expenses payable by Tenant as though such amounts were payable in advance on the date the Event of Default occurred;

6. bring legal action against Tenant to recover damages suffered by City arising out of Tenant's default;
7. exercise all rights and remedies available to the City at law or in equity.

**17.3 Additional Remedies: Re-Entry; Distraint.**

1. In addition to the City's remedies under Section 17.2 above, if the City terminates this Lease following an Event of Default by Tenant, the City may enter and re-enter and possess the Premises, and the City may in the City's sole discretion let or re-let some or all of the Premises .

2. **a.** Also, if the City terminates this Lease following an Event of Default, the City may distraint Tenant's goods on the Premises and in the City's sole discretion sell or otherwise dispose of Tenant's goods.

**b.** Tenant expressly waives the benefits of all present and future Applicable Laws exempting any goods on the Premises, or elsewhere, from distraint, levy, or sale in any legal proceedings taken by the City to enforce any of City's rights under this Lease.

**17.4 Tenant Waives Notice.** Tenant expressly waives, so far as permitted by law, the service of any notice of the City's intention to enter or re-enter the Premises provided for in any current or future Applicable Law, or of the City' institution of legal proceedings to that end. Tenant, for itself and all persons claiming by, through or under Tenant, also waives any and all right of redemption, re-entry, or re-possession or to restore the operation of this Lease in case Tenant is dispossessed by a judgment or by warrant of any court or judge or in case of entry, re-entry or re-possession by City.

**17.5 City Does Not Waive Tenant's Strict Compliance; No Waiver Except By Writing.**

1. The City will not be deemed to have waived Tenant's compliance with any provision of this Lease or any breach of this Lease by Tenant or any Event of Default regardless of whether the City (1) fails to insist upon Tenant's strict performance of any provision of this Lease, (2) fails to exercise any right or remedy following an Event of Default, (3) accepts full or partial Rent or Additional Rent during the continuance of any breach of this Lease by Tenant or during the continuance of any Event of Default.

2. The City will not waive, alter, or modify any provision of this Lease applicable to Tenant or waive any breach of this Lease by Tenant or Event of Default except by a written agreement executed by the City. No waiver by the City of any breach of this Lease by Tenant or of any Event of Default will affect or alter this Lease, but each and every provision of this Lease will continue in full force and effect with respect to any other then-existing or subsequent breach of this Lease by Tenant or Event of Default.

**17.6 Tenant Liable for City's Costs.** Tenant is liable for and shall promptly pay upon demand all of the City's costs, charges and expenses, including the fees of counsel, agents and others retained by City (or, if City uses its own employees for such services, the amount that City would have paid had it engaged the services of outside counsel or others) incurred by City in (1) in any litigation that Tenant causes City to become involved in, and (2) in connection with any action brought by City to enforce any right or remedy against Tenant following an Event of Default.

**17.7** City's Remedies Are Cumulative. The City's rights or remedies under this Lease are not exclusive of each other. Rather, the City's rights and remedies under this Lease are cumulative and in addition to every other right and remedy the City may have at law, in equity, or by statute.

**ARTICLE 18**  
**SURRENDER OF PREMISES; HOLDOVER TENANCY**

**18.1** Tenant Must Surrender Premises. On the last date of the Term, or upon the earlier termination of this Lease, Tenant shall promptly remove its personal property and surrender and deliver up the Premises to the possession and use of City without objection or delay, in good order, condition and repair, free and clear of all lettings and occupancies, and free and clear of all liens and encumbrances and broom clean.

**18.2** Tenant Must Remove Improvements.

**1.** Upon the expiration or earlier termination of this Lease, City will designate in writing to Tenant those Improvements ("**Designated Improvements**") installed or constructed by Tenant that Tenant must remove from the Premises, and Tenant must then promptly remove those Designated Improvements.

**2.** Tenant may not make any claim against the City for Tenant's costs or expenses relating to removal of any Designated Improvements, and Tenant must promptly repair all damage to the Premises caused by Tenant's removal of the Designated Improvements.

**3.** If Tenant fails to remove any of its personal property or any of the Designated Improvements on or before ninety (90) days from the later of (1) the expiration or termination of this Lease, or (2) ninety (90) days from the date the City designates the Designated Improvements, whichever is later, then the City may do any or all of the following:

- a.** deem the personal property and the Designated Improvements to have been abandoned by Tenant;
- b.** retain the personal property and Designated Improvements as the City's own property;
- c.** dispose of some or all of Tenant's personal property and Designated Improvements without accountability to Tenant, in such manner as City may see fit, including but not limited to selling such property and Designated Improvements and retaining the proceeds or demolishing and removing such property and Designated Improvements.

**4.** If under Section 18.2.3.c above the City elects to remove the Tenant's personal property or the Designated Improvements from the Premises, Tenant must promptly reimburse the City for all costs of removal and restoration of the Premises upon demand from City.

**18.3** City Not Responsible for Loss or Damage to Property. City is not responsible for any loss or damage occurring to any property owned by Tenant or any subtenant.

**18.4** Hold Over Tenancy. If, without the execution of a new lease or a written extension of this Lease, Tenant, with or without the consent of City, holds over and continues to



occupy, possess, or use the Premises after the expiration of the Term or earlier termination of this Lease, then Tenant will be deemed to be occupying the Premises under a month-to-month holdover tenancy, which the City may terminate upon 30-days written notice. During any month-to-month holdover tenancy, Tenant must occupy the Premises in strict compliance with all the provisions of this Lease.

**18.5** Holdover Provision Survives. Without limiting the generality of Section 22.6 below, the provisions of this Article 18 survive the expiration or termination of this Lease.

**ARTICLE 19**  
**NOTICES**

**19.1** Manner of Notice.

1. All notices, requests, and other communications required under this Lease (“**Notices**”; each a “**Notice**”) must be in writing and must be sent by (1) United States registered or certified mail, return receipt requested, postage prepaid, (2) hand delivery with receipt obtained, or (3) by a nationally recognized overnight courier service providing receipted proof of delivery.

2. Each Notice must be addressed as set forth below or addressed to such other individual and or address as the party to receive Notice may from time to time designate by Notice to the other party in the manner described above described:

**If intended for City:** Executive Director  
Fairmount Park  
One Benjamin Franklin Parkway – 10<sup>th</sup> Floor  
1515 Arch Street  
Philadelphia, PA 19102

**with a copy to:** Recreation Commissioner  
City of Philadelphia  
One Parkway Building – 10<sup>th</sup> Floor  
1515 Arch Street  
Philadelphia, PA 19102

**and to:** City Solicitor  
City of Philadelphia Law Department  
One Parkway Building – 17<sup>th</sup> Floor  
1515 Arch Street  
Philadelphia, PA 19102

**If intended for the Tenant:**

**19.2** Timing of Notice Received. Notice given under this Lease is deemed received upon receipt or upon refusal to accept delivery.

## **ARTICLE 20**

### **APPROVALS BY CITY; SUBMISSIONS TO CITY**

**20.1** Validity of City Approval. 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 will not be valid or effective unless obtained or confirmed in writing from the Executive Director or the Executive Director's designee. Unless otherwise specified in this Lease, all reports, notices, plans, specifications, certificates, requests for approval, and submissions required of Tenant by this Lease must be submitted by Tenant to the Executive Director or the Executive Director's designee.

**20.2** Effect of Reviews and Approvals by City Under This Lease.

**1.** The City's review, approval, or consent under this Lease of any plans, specifications, work or materials submitted or performed by Tenant under this Lease, including but not limited to plans and specifications for any Alterations under Article 6 above, does not constitute any representation, warranty, or guarantee by the City as to the quality or substance of the matter reviewed or approved or its compliance with Applicable Laws. Tenant must use its own independent judgment as to the accuracy and quality of all such matters and their compliance with Applicable Laws.

**2.** The City's review, approval, or consent under this Lease does not constitute any review, approval, consent, license or permit otherwise required under Applicable Laws by any departments, boards, commissions, and officials of the City of Philadelphia.

## **ARTICLE 21**

### **CITY'S RIGHT TO ENFORCE LEASE**

**21.1** City May Enforce Lease Strictly. The City may enforce all provisions of this Lease strictly, regardless of (1) any law, usage, or custom to the contrary, (2) any conduct of the City in refraining from enforcing any provisions of this Lease at any time, (3) any conduct of the City in refraining from exercising its rights and remedies under this Lease, and (4) any course of conduct between the City and Tenant. Any such conduct or custom must 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.

**21.2** Amendment and Modification. This Lease can only be amended, modified or supplemented by a written agreement signed by both the City and Tenant. This Lease cannot be amended, modified, or supplemented by any oral representations, whenever made, by any official, commissioner, or employee of City. This Lease cannot be amended, modified, or supplemented by any course of conduct between the City and Tenant.

**21.3** No Implied Consent. **The City's failure to respond orally or in writing to any request or offer from Tenant to modify or waive any of Tenant's obligations under this Lease does not constitute the City's consent to Tenant's request or offer. Tenant agrees it**

**must strictly and promptly comply with its obligations under this lease unless and until its request or offer to modify or waive any provision of this Lease is explicitly accepted in writing by the City.**

**ARTICLE 22**  
**MISCELLANEOUS**

**22.1 Lease Binding.** Subject to Article 13 above, this Lease is binding upon City and Tenant and their successors and assigns.

**22.2 No Third Party Beneficiaries.** Nothing in this Lease is intended, nor may it be deemed or construed, to confer any benefit or right upon any party other than City and Tenant.

**22.3 Integration Clause; Complete Agreement.** This Lease is the complete, final, and exclusive agreement between the City and Tenant relative to the Premises and Tenant's use of the Premises, and there are no promises, agreements, conditions or understandings, either oral or written, between them other than as set forth in this Lease. This Lease supersedes all prior negotiations between the City and Tenant.

**22.4 Captions.** The captions, article numbers and paragraph numbers appearing in this Lease are inserted only as a matter of convenience and may not in any way be construed as defining or limiting the scope or intent of the provisions of this Lease nor in any way as affecting this Lease.

**22.5 Partial Invalidity.** If any provision of this Lease or the application of any provision of this Lease 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 by such judgment and each provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

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

**22.7 Governing Law.** This Lease is governed by the laws of the Commonwealth of Pennsylvania, without giving effect to choice of law provisions.

**22.8 Counterparts.** This Lease may be executed in one or more counterparts, each of which is an original, and all of which together are a single agreement.

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

**22.10 Interpretation.** City and Tenant agree that the rule of construing or interpreting any ambiguities in an agreement against the drafter of the agreement does not apply to this Lease.

**22.11 Background.** The Background paragraphs set forth above are part of this Lease. Tenant warrants that the representations set forth in the Background paragraphs about Tenant's purpose and programs are true and correct.

**22.12 No Broker.** Tenant represents and warrants that it has not used the services of any broker or agent in the selection of the Premises for Tenant's use or in the negotiation of this Lease. Tenant is solely liable for any and all commission, charges, and fees claimed by any broker in connection with the selection of the Premises for Tenant's use or in the negotiation of this Lease.

**22.13 Waiver of Jury Trial.** **Tenant, so far as permitted by Applicable Laws, expressly, intentionally, voluntarily, and knowingly waives trial by jury in all litigations arising out of or relating to this Lease.**

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

AS EVIDENCE OF THEIR AGREEMENT TO ALL THE PROVISIONS OF THIS LEASE, City and Tenant have caused this Lease to be executed by their duly authorized representatives as of the day and year first written above.

**LANDLORD,  
City of Philadelphia** by its

Approved as to Form  
Romulo L. Diaz, Jr., City Solicitor

FAIRMOUNT PARK COMMISSION

By: \_\_\_\_\_  
Lawrence K. Copeland,  
Senior Attorney  
City of Philadelphia Law Department

By: \_\_\_\_\_  
Robert N. C. Nix, III, President

By: \_\_\_\_\_  
Mark A. Focht, Executive Director  
Fairmount Park

RECREATION DEPARTMENT

By: \_\_\_\_\_  
Victor Richard, III, Commissioner

**TENANT:**

CORPORATE SEAL:

BY: \_\_\_\_\_  
R. Seth Williams  
President

BY: \_\_\_\_\_  
Angela Albergotti  
Secretary

**EXHIBIT A**

**Map of Premises**

**EXHIBIT B**

**Tenant Programs**

1. OPCA meetings
2. Little League Baseball
  - T-Ball
  - Coaches Pitch
  - Hardball & Softball
3. Basketball League
4. Town Watch Program
5. Neighborhood Beautification
6. Zoning Committee to review Neighborhood development projects

In addition, Tenant represents and warrants that it intends to begin and operate the following programs in the Premises under this Lease:

- A. Tennis League
- B. Literacy Program
- C. Senior Citizen Programming
- D. Conflict Resolution Training
- E. Parenting Skills Programs for Unwed, Teenage Mothers

**EXHIBIT C**

**Tenant's Corporate Documents**



# City of Philadelphia

BILL NO. 071085 continued

Certified Copy

# City of Philadelphia

BILL NO. 071085 continued

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 13, 2007. The Bill was Signed by the Mayor on January 3, 2008.



Patricia Rafferty  
Chief Clerk of the City Council