



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 130631

Introduced September 19, 2013

**Councilmember Sanchez
for
Councilmember Tasco**

**Referred to the
Committee on Public Property and Public Works**

AN ORDINANCE

Approving a Lease Agreement between Philadelphia Gas Works by Philadelphia Facilities Management Corporation, solely in its capacity as operator and manager of the City-owned Philadelphia Gas Works, and Elliott-Lewis Corporation for use of a certain 2.86 acre parcel located near Delaware Avenue and Tioga Street, Philadelphia, Pennsylvania.

WHEREAS, The Philadelphia Gas Works by Philadelphia Facilities Management Corporation ("PFMC") desires to enter into a lease agreement ("Lease Agreement") whereby PFMC, in its capacity as operator and manager of the City-owned Philadelphia Gas Works, under and pursuant to an agreement with the City of Philadelphia dated December 29, 1972, as amended, will permit Elliott-Lewis Corporation to utilize a certain 2.86 acre parcel located near Delaware Avenue and Tioga Street; and

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

WHEREAS, The Philadelphia Gas Commission at a meeting duly held on June 11, 2013, approved the proposed Lease Agreement between Philadelphia Gas Works by Philadelphia Facilities Management Corporation and Elliott-Lewis Corporation in the revised form attached hereto as Exhibit "A", under certain terms and conditions, and favorably recommended the transaction to City Council; now, therefore

City of Philadelphia

BILL NO. 130631 continued

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Pursuant to Section VIII(3) of the Agreement dated December 29, 1972, as amended, between the City of Philadelphia and the Philadelphia Facilities Management Corporation, the City Council does hereby approve the Lease Agreement concerning a certain 2.86 acre parcel located near Delaware Avenue and Tioga Street, set forth in Exhibit "A" attached hereto and made a part hereof, between Philadelphia Gas Works by Philadelphia Facilities Management Corporation, and Elliott-Lewis Corporation.

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

LEASE AGREEMENT

Between

PHILADELPHIA GAS WORKS by PHILADELPHIA FACILITIES MANAGEMENT
CORPORATION ("PFMC")

and

ELLIOTT-LEWIS CORPORATION

DATED:

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease Agreement", "Agreement" or "Lease") is dated as of the _____ day of _____, 2013, by and between PHILADELPHIA GAS WORKS by PHILADELPHIA FACILITIES MANAGEMENT CORPORATION ("PFMC"), a non-profit Pennsylvania corporation, solely in its capacity as operator and manager of the municipally owned PHILADELPHIA GAS WORKS, under and pursuant to an Agreement with the City of Philadelphia dated December 29, 1972, as amended (collectively, "PGW"), and ELLIOTT-LEWIS CORPORATION, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, and qualified to business in the Commonwealth of Pennsylvania ("Tenant").

BACKGROUND:

A. PGW controls a certain unimproved parcel of land containing approximately 2.86 acres (the "Land") located near the northwest intersection of Delaware Avenue and Tioga Street, which is more fully shown on the exhibit which is attached hereto as Exhibit "A" and made a part hereof.

B. Tenant desires to occupy the Land for the sole purpose of storing construction cranes.

C. Subject to the terms and conditions of this Lease Agreement, PGW desires to lease the Land to Tenant, who desires to lease the same from PGW.

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

WITNESSETH:

1. **LEASED PREMISES.**

A. **Definition of Leased Premises.** PGW, subject to the terms and conditions hereof, hereby leases to Tenant and Tenant hereby leases from PGW the Land. The Land, together with any improvements hereafter located thereon, being referred to collectively as the "Leased Premises".

B. **"AS IS" Condition.** Except as expressly set forth herein in Section 19.G, Tenant assumes all risk with respect to the existing physical condition of the Leased Premises. Tenant represents and warrants to PGW that Tenant is familiar with the Leased Premises and that they have been leased to Tenant in an "AS IS" and "WHERE IS" condition, without any representation or warranty, express or implied, including, without limitation, any warranty of fitness for purpose, or suitability for construction.

PGW makes no representation, express or implied, that Tenant shall be able to obtain the necessary permits, authorizations, waivers and approvals necessary to construct on the Land any building or improvement, or to occupy the Lease Premises for the Permitted Use.

C. **Permitted Use.** The Leased Premises shall be used by Tenant for the surface storage of Tenant's construction cranes and associated crane support vehicles (the "Permitted Use") and for no other purpose.

2. **TERM.**

A. Tenant shall use and occupy the Leased Premises for the "Term". For purposes of this Lease, the "Term" shall consist of a period of four (4) years, commencing on _____ (the "Commencement Date") and expiring at 11:59 p.m. on the day immediately preceding the fourth anniversary of the Commencement Date.

B. It is understood and agreed by the parties that PGW may terminate this lease at any time upon sixty (60) days prior written notice. Upon termination, Tenant, at Tenant's sole cost and expense, shall vacate the Leased Premises, and if requested by PGW, remove and/or relocate any and all improvements authorized hereunder and restore the Leased Premises to PGW's reasonable satisfaction, which may include restoring the Leased Premises to their original condition extant upon commencement of the Lease. It is understood and agreed that there shall be no liability whatsoever by PGW to Tenant for any damages or loss of profits or cost by reason of such vacating of the Leased Premises or removal or relocation of improvements or restoration of the Leased Premises. Subject to any right of PGW to offset sums otherwise due to Tenant hereunder (including, without limitation, pursuant to PGW's offset rights under Section 27.A herein), pre-paid Rent shall be refunded to Tenant in a pro rata amount upon a termination by PGW pursuant to this Section 2.B.

3. **RENT.**

A. **Original Amount.** Tenant shall pay, as rent ("Rent") during the Term, the sum of Twenty-Four Thousand and 0/100 Cents (\$24,000) per year, due, in advance, on the first day of each year of the Term, without notice, demand, set-off or counterclaim. Tenant shall pay said Rent and any Additional Rent (as hereinafter defined) to PGW, payable to "PGW" at the office of PGW at the address stated in Section 26, Attention: Director of Facilities, or to such other party or to such other address as PGW may designate from time to time by written notice to Tenant. If PGW shall at any time or times accept said Rent after it shall become due and payable, such acceptance shall not excuse delay upon subsequent occasions, or constitute, or be construed as a waiver of any or all of PGW's rights hereunder. Tenant shall pay interest at the default rate (the "Default Rate") of five percent (5%) plus the Prime Rate as published from time to time in the Wall Street Journal on all payments of Rent or Additional Rent which are delinquent for more than five (5) days, or such other

maximum allowable interest rate should the Default Rate violate any applicable laws or regulations. PGW's failure to impose such an interest charge in any particular case shall not be deemed a waiver of PGW's right to do so in any future case.

B. **Annual Adjustment.** During every year of the Term, the Rent due hereunder for the following year of the Term shall be increased 3.5% as follows:

Year 2:	\$24,840.00
Year 3:	\$25,709.40
Year 4:	\$26,609.23

4. **TAXES AND ADDITIONAL RENTS.**

A. **Definition of Taxes.** As used herein, the term "Taxes" shall mean and include all real estate taxes and assessments, general or special, ordinary or extraordinary, foreseen or unforeseen, imposed upon the Land, and any existing or future improvements of whatever kind thereto or thereon, any income received by Tenant from its activities on the Land, or upon the privileges of Tenant to occupy the Land. Taxes shall include, without limitation, any assessment imposed by any public or private entity by reason of any building being located in a special services district or similar designation. Included under the term "Taxes" shall also be any transfer taxes due in connection with this Lease, as well as any City of Philadelphia Commercial Activity Tax, Net Profits Tax, School District Realty Use & Occupancy Tax and other similar taxes and charges, to the extent applicable. If, due to a future change in the method of taxation, any other tax, however designated, is imposed in substitution for Taxes or any part thereof, or if any federal tax is imposed, then such other tax shall be included in the word "Taxes".

B. **Payment of Taxes.** During the Term of this Lease, Tenant shall pay or cause to be paid, no later than fifteen (15) days before each installment is due, any and all Taxes assessed or imposed upon the Leased Premises and against the Land and the improvements or any portion thereof. Tenant shall provide PGW with evidence reasonably acceptable to PGW that each such installment has been paid no later than ten (10) days prior to the date each such installment is due. Tenant's failure to provide such evidence as set forth herein shall be a default hereunder.

C. **Other Charges Due as Rents.** Tenant shall pay as additional rents any and all sums of money or charges (other than the Rent) required to be paid by Tenant under this Lease, whether or not the same is designated as an "Additional Rent". Tenant shall also pay as an Additional Rent any and all sums which may become due by reason of the failure of Tenant to comply with each and every covenant, term or condition of this Lease, and any and all damages, costs and expenses which PGW may suffer or incur by reason of any default by Tenant or failure on Tenant's part to comply with the terms, covenants and conditions of this Lease and with any obligation under the law. If such amounts or charges are not paid when due, they shall, nevertheless, be

collectible as an Additional Rent with any installment of Rent thereafter falling due. For the purposes of this Lease, the Rent plus all Additional Rents are hereinafter sometimes referred to collectively as the "Rent". Any Rent due for periods of less than one (1) month shall be prorated on a daily basis based on a calendar year of 365 days.

5. **INTENTIONALLY OMITTED.**

6. **CARE OF LEASED PREMISES.** Tenant agrees that it shall:

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

B. Give PGW access to the Leased Premises at all reasonable times, without charge or deduction of the Rent, to enable PGW to examine the same and to make such repairs, additions and alterations as PGW may deem advisable, including, without limitation, installation and/or monitoring of wells now or hereafter installed on the Lease Premises.

C. Keep the Leased Premises in good order and condition and commit no waste on the Leased Premises. Tenant shall assume full repair and maintenance responsibilities for all improvements and facilities and shall maintain same in first class condition. Maintenance shall include, but not be limited to, fencing, snow and ice removal, all janitorial services, the repair and/or replacement of damage caused by its employees, patrons or its operation thereon; and repair of all equipment, drainage installation, paving, curbs, islands, and improvements.

D. Provide a complete and proper arrangement for the frequent and adequate sanitary handling and disposal, away from the Land, of all trash, garbage and other refuse or materials caused as a result of the operation of its business. Tenant shall provide and use compactor type metal receptacles or other PGW-approved alternate equipment for all such garbage, trash and other refuse. Piling of boxes, cartons, barrels, pallets, or other items, in an unsightly or unsafe manner as determined in PGW's sole and absolute discretion, on or about the Leased Premises, is prohibited.

E. Recognize that improvements attached and/or affixed to the Leased Premises become the property of the PGW in accordance with the terms hereof and may not be removed without the prior written approval of the PGW, which approval shall be at PGW's sole and absolute discretion.

F. Upon the termination of this Lease in any manner whatsoever, remove Tenant's property and those of any other person claiming by, through or under Tenant,

and quit and deliver the Leased Premises to PGW peaceably and quietly in as good order and condition as the same are now in or hereafter may be put in by PGW or Tenant, reasonable use and wear thereof excepted. Property not removed by Tenant at the termination of this Lease, however terminated, may be considered abandoned and PGW may dispose of the same as it deems expedient with reasonable cost thereof to be billed to the Tenant.

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

H. Not make any alteration of, improvements to, or addition to the Leased Premises without the prior written approval of the PGW.

I. Without the prior written approval of PGW, which may be granted or withheld by PGW in its sole and absolute discretion, erect, maintain or display any signs on the Leased Premise. In addition to PGW's approval, Tenant at its sole cost and expense shall obtain the approval of all other local, state and federal agencies as may be required.

J. Appoint a local representative who shall have the authority to make day-to-day decisions and shall be responsible for coordinating all activities with PGW. The name, address and telephone number of the local representative is to be submitted to PGW on or before the Commencement Date, and PGW is to be notified within two (2) business days of any changes.

K. Not use or occupy, or suffer or permit the use or occupancy of, the Leased Premises or any part thereof in any manner or by anything, in any way, in the sole judgment of PGW, which would impair the appearance, character or reputation of PGW or cause the discharge of objectionable fumes, vapors or odors, or impair the appearance, character or reputation of PGW, or increase the risk of fire or other casualty to the Leased Premises or to the Land.

L. Not permit a mechanic's lien for any labor or materials to attach to the whole or any part of the Leased Premises, and Tenant hereby agrees that if a mechanic's lien is filed upon all or any portion of the Leased Premises, Tenant shall protect and hold harmless PGW against any loss, liability or expense whatsoever, by reason thereof and shall defend at its own expense such actions or proceedings as may be necessary to remove such lien from the records within ten (10) days of notice to Tenant of the existence of said lien.

M. If Tenant is an entity, such as a partnership or corporation, Tenant shall maintain its existence in good standing in the Commonwealth of Pennsylvania throughout the Term of this Lease.

7. SUBLEASING AND ASSIGNING.

A. **Restriction.** Tenant shall not make or cause to be made any encumbrances on the Leased Premises. Tenant shall not, without the prior written consent of PGW, which consent shall be at PGW's sole and absolute discretion, assign, pledge, hypothecate or suffer or permit any involuntary assignment, attachment or execution upon this Lease or any interest herein or sublease the Leased Premises or any part thereof. Any of the foregoing acts (including any transfers, assignments or other dispositions that are involuntary or are by operation of law) without such consent shall be void and shall, at the option of PGW, entitle PGW to terminate this Lease.

B. **Future Compliance.** Regardless of PGW's consent, no subletting or assignment shall release Tenant of Tenant's obligation or alter the primary liability of Tenant to pay Rent and to perform all other obligations to be performed by Tenant hereunder, and in the case of an assignment, unless otherwise agreed in writing by PGW, Tenant and such assignee shall be jointly and severally liable for the obligations of Tenant under this Lease. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. In the event of default by any assignee of Tenant or any successor of Tenant in the performance of any of the terms hereof, PGW may proceed directly against Tenant without the necessity of exhausting remedies against such assignee or successor. PGW may consent to subsequent assignment or subletting or may execute amendments or modifications to this Lease with assignees of Tenant without notifying Tenant or any successor of Tenant, and without obtaining its or their consent thereto and such action shall not relieve Tenant of liability under this Lease, except as set forth above.

8. **FIRE OR OTHER CASUALTY.** Subject to the provisions of this Section 8, if the Leased Premises are damaged by fire or other casualty, the damaged areas immediately shall be repaired by and at the expense of Tenant to at least as good a condition as that which existed immediately prior to such damage. In no event shall the PGW be obligated to repair or restore any such damage. Rents until such repairs are completed shall not be abated or apportioned. Tenant acknowledges notice that (i) PGW shall not obtain insurance of any kind on the Land, the Leased Premises, Tenant's furniture, furnishings, equipment or fixtures, alterations, improvements and additions, and (ii) it is Tenant's obligation to obtain such insurance at Tenant's sole cost and expense as provided in Section 10.

9. **LIABILITY.** Neither PGW nor PGW's agents, servants, and employees shall be liable for, and Tenant hereby assumes all risk for and expressly releases and relieves PGW and PGW's agents, servants, and employees from, all liability in connection with any and all damage to or loss of property, loss or interruption of business occurring to Tenant, sub-tenants, invitees or any other person in or about or arising out of (i) PGW's negligence or misconduct occurring after the effective date of this Lease Agreement, and/or (ii) the Leased Premises after the effective date of this Lease Agreement from, without limitation, (A) any fire, other casualty, accident, occurrence or condition in or upon the Leased Premises; (B) any defect in or failure of: (1) any equipment or

systems of the Leased Premises and (2) any walkways installed on or in the Leased Premises; (C) any steam, fuel, oil, water, rain or snow that may leak into, issue or flow from any part of the Leased Premises or Land from the drains, pipes or plumbing, sewer or other installation of same, or from any other place or quarter; (D) the breaking or disrepair of any installations, equipment and other systems; (E) the falling of any fixture or wall or ceiling materials; (F) broken glass; (G) latent or patent defects; (H) the exercise of any rights by PGW under the terms and conditions of this Lease; (I) any acts or omissions of the other Tenants or occupants of nearby buildings; (J) any acts or omissions of other persons; or (K) theft, Act of God, public enemy, injunction, riot, strike, insurrection, war, court order, or any order of any governmental authorities having jurisdiction over the Leased Premises.

10. **INSURANCE.**

A. **Insurance Requirements.** During the Term, Tenant shall carry, at its own expense, insurance with companies carrying an A. M. Best's rating of not less than A- and approved by PGW, with coverage limits of not less than stipulated below.

1. **WORKERS' COMPENSATION INSURANCE**, covering Tenant's obligations under all applicable laws and Employer's Liability Insurance in the amount of \$1,000,000 per occurrence.

2. **COMMERCIAL GENERAL LIABILITY INSURANCE**, including Contractual Liability, with limits of \$1,000,000 per occurrence Bodily Injury and Property Damage, \$2,000,000 General Aggregate, \$2,000,000 Products/Completed Operations Aggregate and \$1,000,000 Personal Injury/Advertising Injury. Such liability insurance shall contain, without limitation, coverage for the following hazards: Premises, Products/Completed Operations, Liability assumed under an insured contract (including the tort liability of another assumed in a business contract) and Personal Injury (including coverage for discrimination, defamation, harassment, malicious prosecution, slander and mental anguish). Railroad exclusion must be removed. Products/Completed Operations must be included and maintained for at least three (3) years beyond completion of the work required by contract in accordance with the terms thereof. ISO Contractual Liability Limitation Endorsement #CG2391093 shall not apply to the contract. Such policy must contain a "Severability of Interests" clause. This insurance shall be excess over any other insurance, whether primary, excess, contingent or on any other basis, that is available to Tenant or its subcontractor covering liability for damages because of Bodily Injury or Property Damage to which Tenant has been included as an Additional Insured. The Additional Insured Endorsement(s) should also include Products/Completed Operations and "your work".

3. **BUSINESS AUTOMOBILE LIABILITY INSURANCE**, with limits of \$2,000,000 Combined Single Limit per Occurrence Bodily Injury and Property Damage covering all owned, non-owned and hired vehicles. Such policy must contain a "Severability of Interests clause.

4. EXCESS/UMBRELLA LIABILITY Insurance, with limits of not less than \$10,000,000 in Any One Claim or Occurrence. The Excess/Umbrella policy shall follow the form and be excess of all underlying insurance required by this contract except Professional Liability/Errors & Omissions coverage as outlined below.

5. CONTRACTORS POLLUTION LIABILITY Insurance, including coverage for disposal of materials removed from PGW property at non-owned disposal sites, on an occurrence basis with a minimum limit of \$2,000,000 each claim and a \$4,000,000 aggregate, with a deductible not to exceed \$100,000. Policy may not exclude asbestos or mold. Coverage under an occurrence form will be maintained in full force and effect under the policy during the contract period. Under a claims made form, continuous coverage is required. Should an Extended Discovery Period or "tail" coverage be required in the event coverage is terminated, such coverage must be maintained for a period of not less than three (3) years. PGW, PFMC, the City of Philadelphia, and their respective officers, employees, directors, boards, commissions, and agents will be included as Additional Insureds. A copy of the actual Additional Insured Endorsement is required. Coverage will apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in Bodily Injury or Property Damage.

6. PROPERTY INSURANCE, and, if applicable, Flood Insurance, on property owned or leased by Tenant. Property Insurance shall be written on an "All Risk" basis covering all improvements, betterments, equipment, trade fixtures, merchandise, business personal property and any other property in Tenant's care, custody or control, in an amount equal to the full replacement cost and with no penalty for coinsurance.

B. Self-Insurance. Tenant may not self-insure any coverage required under this Lease without providing a prior written request to PGW's Director of Risk Management. In the event Tenant wants to self-insure any of the coverages listed above, it shall submit to PGW's Director of Risk Management prior to the Commencement Date hereunder, a certified copy of Tenant's most recent audited financial statement, and such other evidence of its qualifications to act as self-insurer (e.g. state approval) as may be requested by PGW's Director of Risk Management. If self-insurance of a required coverage is acceptable to PGW, it is understood and agreed that PGW, its officers, employees and agents shall be entitled to receive the same coverages and benefits under Tenant's self-insurance program that they would have received had the insurance requirements been satisfied by a reputable insurance carrier authorized to do business in the Commonwealth of Pennsylvania or otherwise acceptable to PGW. If at the time of commencement of the term of this Lease, Tenant self-insures its Automobile Liability and/or Workers' Compensation and Employers' Liability coverage, Tenant may, in lieu of the foregoing, furnish to PGW a current copy of the state issued Certificate of Self-Insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate. The insurance (including

self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnifications made in this Lease by Tenant to PGW, or to limit Tenant's liability under this Lease to the limits of the policies of insurance (or self insurance) required to be maintained by Tenant hereunder.

C. Additional Provisions. All policies of insurance (except Workers Compensation) will include PGW, Philadelphia Facilities Management Corporation ("PFMC"), and the City of Philadelphia, and their respective officers, employees, directors, boards, commissions and agents, as Additional Insureds and provide for Waiver of Rights of Subrogation. An endorsement is required stating that Tenant's policies affording Additional Insured status will be primary to any other coverage available to PGW, PFMC, and the City of Philadelphia and their respective officers, employees, directors, boards, commissions and agents, and any insurance maintained by PGW will be excess and non-contributory. No act or omission of PGW, PFMC and/or the City of Philadelphia and their respective officers, employees, directors, boards, commissions and agents, shall invalidate the coverage.

Prior to the Commencement Date, Tenant will furnish sufficient certificates of all of the insurance to be provided by Tenant, which certificates will provide that the said insurance will not be cancelled or changed until at least thirty (30) days written prior notice is given. If Tenant employs contractors, Tenant will require contractors to maintain, during performance of work, insurance as required of Tenant above. Tenant shall provide evidence of Terrorism coverage for certified/non-certified acts. Renewal certificates and policies, as required, shall be promptly forwarded to PGW. All certificates and policies shall contain a provision that coverages afforded will not be canceled or materially altered until at least thirty days after written notice has been given to PGW. PGW, PFMC, and the City of Philadelphia and their respective officers, employees, directors, boards, commissions and agents, shall be included as Additional Insureds on the General Liability, Automobile Liability, Excess/Umbrella Liability and Environmental Liability, Insurance policies.

11. EMINENT DOMAIN.

A. Total or Partial Taking. If the whole of the Leased Premises shall be condemned or taken either permanently or temporarily for any public or quasi-public use or purpose, under any statute or by right of eminent domain, or by private purchase in lieu thereof, then, in such event, the Term shall cease and terminate from the date when possession is taken thereunder pursuant to such proceeding or purchase. The Rent shall be adjusted as of the time of such termination and any Rent paid for the period thereafter shall be refunded. If a portion only of the Leased Premises shall so be taken, PGW may elect to terminate this Lease from the date when possession is taken thereunder pursuant to such proceeding or purchase or PGW may require Tenant to repair and restore, at Tenant's expense, the portion not taken and thereafter the Rent shall be reduced proportionate to the portion of the Leased Premises taken.

B. **Award.** In the event of any total or partial taking of the Leased Premises, PGW shall be entitled to receive the entire award in any such proceeding and Tenant hereby assigns any and all right, title and interest of Tenant now or hereafter arising in or to any such award or any part thereof and hereby waives all rights against PGW and the condemning authority, except that Tenant shall have the right to claim and prove in a completely separate proceeding and to receive any award which may be made to Tenant, if any, specifically for damages for loss of good will, movable trade fixtures, equipment and moving expenses, provided that such award in no way diminishes or adversely affects PGW's award. Notwithstanding the aforesaid, if PGW requires Tenant to repair and restore the Leased Premises, PGW shall make such a pro-rata portion award available to Tenant for such repair and restoration.

12. **DEFAULT AND REMEDIES.**

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

1. the vacation or abandonment of the Leased Premises by Tenant;
2. a failure by Tenant to pay, when due, any installment of the Rent;
3. the occurrence of any default under the then unexpired Lease;
4. a failure by Tenant to pay, when due, any Additional Rent hereunder or any such other sum herein required to be paid by Tenant where such failure continues for five (5) days after written notice thereof to Tenant provided that PGW shall not be obligated to send such notice more than once in any one (1) calendar year;
5. a failure by Tenant to observe and perform any other provision or covenant of this Lease to be observed or performed by Tenant, where such failure continues for ten (10) days after written notice thereof to Tenant provided, however, that if the nature of the default is such that the same cannot reasonably be cured within such ten (10) day period, Tenant shall not be deemed to be in default if Tenant shall within such period commence such cure and thereafter diligently prosecute the same to completion, but in no event for longer than thirty (30) days after written notice to Tenant; and
6. the filing of a petition by or against Tenant for relief as a bankruptcy or insolvency or for its reorganization or for the appointment pursuant to any local, state or federal bankruptcy or insolvency law of a receiver or trustee of any part of Tenant's property; or, an assignment by Tenant for the benefit of creditors; or, the taking possession of the property of Tenant by any local, state or federal governmental officer or agency or court-appointed official for the dissolution or liquidation of Tenant or for the operating, either temporary or permanent, of Tenant's business, provided, however, that if any such action is commenced against Tenant the same shall not constitute a default

if Tenant causes the same to be dismissed or discharged within sixty (60) days after the filing of same.

B. **Remedies of PGW.** Upon the occurrence of any event of default set forth in Section 12.A. or elsewhere in this Lease, PGW, at its option, may take all or any of the following actions:

1. PGW shall be entitled to terminate this Lease and recover (i) all Rents which have accrued prior to the date of said default and which are then due and payable, (ii) damages for the period following the termination of the Term, based upon any and all amounts which Tenant would have been obligated to pay for the balance of the Term, and PGW may declare such sums to be immediately due and payable, and (iii) any and all sums under Section 12.D. It is agreed that in determining the amount of such damage for the period after termination of any future payments which would have been due PGW, PGW may make such determination based upon the sum thereof for the full year immediately prior to the event of default. PGW's estimate of all amounts which would have been due and payable after termination for the balance of the Term shall be discounted to present value at the then rate of interest commonly referred to as the "prime rate" by Wells Fargo Bank, Philadelphia, Pennsylvania (as the same or any successor index may exist from time to time) (the "Prime Rate"), and such discounted estimate shall be referred to as the "Lost Profit Sum". The Lost Profit Sum shall be immediately due and payable upon default. If specifically stated by the City, then contemporaneously with the demand for such Lost Profit Sum, this Lease shall be deemed terminated and Tenant shall immediately quit and surrender to PGW the Leased Premises in accordance with Section 12.B.2. Tenant's liability for the payment of the Lost Profit Sum shall survive the termination of the Lease; and/or

2. PGW, at any time after the occurrence of any event of default, whether or not the Lease has been terminated as aforesaid, may reenter and repossess the Leased Premises and any part thereof with or without process of law, provided no undue force shall be used, and shall have the option, but not the obligation either in its own name, as agent for Tenant if this Lease has not been terminated or for its own behalf if this Lease has been terminated, to release all or any part of the Leased Premises; provided that PGW shall not be required to accept any Tenant proposed by Tenant or observe any instruction given by Tenant about such relicensing. The failure of PGW to release the Leased Premises or any part or parts thereof shall not release or affect Tenant's liability hereunder, nor shall PGW be liable for failure to release, or in the event of releasing, for failure to collect the rent thereof, and in no event shall Tenant be entitled to receive any excess of net rents collected over sums payable by Tenant to PGW hereunder. No such reentry or taking possession of the Leased Premises shall be construed as an election on the PGW's part to terminate this Lease unless a written notice of such election by PGW is given to Tenant. Notwithstanding any such relicensing without termination, PGW may at any time thereafter elect to terminate this Lease for any previous breach and default. For the purpose of such relicensing, PGW may decorate or make repairs, changes, alterations or additions in or to the Leased Premises to the extent deemed by PGW desirable or convenient, and the cost of such

decoration, repairs, changes, alterations or additions shall be charged to and payable by Tenant as Additional Rent hereunder, as well as any reasonable brokerage and legal fees expended by PGW; and any sums collected by PGW from any new Tenant obtained on account of the Tenant shall be credited against the balance of the Rent due hereunder as aforesaid. Tenant shall pay to PGW monthly, on the days when Rent would have been payable under this Lease, the amount due hereunder less the amount obtained by PGW from such new Tenant, if any; and/or

3. Without terminating the Lease, PGW may accelerate the whole or any part of the Rent for the entire unexpired balance of the Term, as well as all other charges, payments, costs and expenses herein agreed to be paid by Tenant, and any fees or other charges, payments, costs and expenses if so accelerated shall, in addition to any and all installments of the Rent already due and payable and in arrears, and any other charge or payment herein reserved, included or agreed to be treated or collected as Rent and any other charge, expense or cost herein agreed to be paid by Tenant which may be due and payable and in arrears, be deemed due and payable as if, by the terms and provisions of this Lease, such accelerated Rent and other charges, payments, costs and expenses were on that date payable in advance. Such sum is hereinafter referred to as the "Accelerated Rent". For such purposes, all items of the Additional Rent, component of the Accelerated Rent, PGW may make a determination based upon such sums for the full year immediately prior to the event of default, or otherwise in PGW's reasonable judgment; and/or

4. In the event PGW elects to terminate this Lease, PGW, at its option, may serve notice upon Tenant that this Lease and the then unexpired Term hereof shall cease and expire and become absolutely void on the date specified in such notice, to be no less than five (5) days after the date of such notice, without any right on the part of the Tenant thereafter to save the forfeiture by payment of any sum due or by the performance of any term, provision, covenant, agreement or condition broken; and, thereupon and at the expiration of the time limit in such notice, this Lease and the Term hereof granted, as well as the right, title and interest of the Tenant hereunder, shall wholly cease and expire and become void in the same manner and with the same force and effect (except as to Tenant's liability) as if the date fixed in such notice were the date herein stated for expiration of the Term. Thereupon, Tenant shall immediately quit and surrender to PGW the Leased Premises by summary proceedings, detainer, ejectment or otherwise and remove itself and all other occupants thereof and, at PGW's option, any property thereon without being liable to indictment, prosecution or damages therefor. No such expiration or termination of this Lease shall relieve Tenant of this liability and obligations under this Lease, whether or not the Leased Premises shall be release, all of which shall survive such expiration or termination; and/or

5. Tenant further hereby expressly authorizes and empowers (which power is coupled with an interest) PGW, upon the occurrence of an event of default, to exercise the remedy of self-help and to enter upon the Leased Premises, distraint upon and remove therefrom all inventory, equipment, machinery, trade fixtures and personal property of whatsoever kind or nature, whether owned by Tenant or by others, and to

proceed without judicial decree, writ of execution or assistance or involvement of constables or PGW and Tenant officers, to conduct a private sale, by auction or sealed bid without restriction. Tenant hereby waives the benefit of all laws, whether now in force or hereafter enacted, exempting any personal property on the Leased Premises from sale or levy, whether execution thereon is had by order of any court or assistance or involvement of constables or PGW and Tenant officer, or through self-help, private sale hereinabove authorized; and/or

6. PGW shall have the right of injunction, in the event of a breach of default or threat thereof by Tenant of any of the agreements, conditions, covenants or terms hereof, to restrain the same and the right to invoke any remedy allowed by law or in equity, whether or not other remedies, indemnity or reimbursements are herein provided. The rights and remedies given to PGW in this Lease are distinct, separate and cumulative remedies; and no one of them, whether or not exercised by PGW, shall be deemed to be in exclusion of any other.

7. Tenant expressly waives the benefits of all laws, now or hereafter in force, exempting any of Tenant's property on the Leased Premises or elsewhere from distraint, levy or sale in any legal proceedings taken by PGW to enforce any rights under this Lease. Tenant further waives the right of inquisition on any real estate that may be levied upon to collect any amount which may become due under the terms and conditions of this Lease, and does hereby voluntarily condemn the same and authorize the Prothonotary to enter a Writ of Execution or other process upon Tenant's voluntary condemnation, and further agrees that said real estate may be sold on a Writ of Execution or other process. If proceedings shall be commenced by PGW to recover possession under the Acts of Assembly, either at the end of the Term of any extension thereof or on sooner termination thereof, or for nonpayment of Rent or any other reason, Tenant specifically waives, if applicable, the right to the three (3) months notice and/or the fifteen (15) or thirty (30) days notice required by the Act of April 5, 1957, No.-20, and agrees that five (5) days notice shall be sufficient in either or any such case. The right to enter judgment against Tenant and to enforce all of the other provisions of this Lease hereinabove provided for may be exercised by any assignee of PGW's right, title and interest in this Lease, in such assignee's own name, notwithstanding the fact that any or all assignments of said right, title and interest may not be executed and/or witnessed in accordance with the Act of Assembly and any and all laws regulating the manner and/or form in which such assignments shall be executed and witnessed.

THE FOLLOWING TWO SUBSECTIONS SET FORTH A WARRANT OR AUTHORITY FOR AN ATTORNEY AND/OR PROTHONOTARY TO CONFESS JUDGMENT AGAINST TENANT IN GRANTING THIS WARRANT OF ATTORNEY TO CONFESS JUDGMENT AGAINST TENANT, TENANT HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, AND (ON THE ADVICE OF SEPARATE COUNSEL OF TENANT IF TENANT HAS USED COUNSEL IN REGARD TO ENTERING INTO THIS AGREEMENT) UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS TENANT HAS OR MAY HAVE TO PRIOR NOTICE AND AN OPPORTUNITY FOR HEARING

UNDER THE CONSTITUTIONS AND LAWS OF THE UNITED STATES AND THE COMMONWEALTH OF PENNSYLVANIA.

8. If there is an event of default, Tenant hereby empowers any prothonotary or attorney of any court of record to appear for Tenant in any and all actions which may be brought for the Rent and to sign for Tenant an agreement for entering into any competent court a suit or suits, action or actions, for the recovery of the Rent and, in such suit or suits or in such action or actions, TO CONFESS JUDGMENT AGAINST TENANT for all or any part of such Rent including, at PGW's option, the Rent for the entire unexpired balance of the Term, computed as aforesaid, and any other charges, payments, costs and expenses reserved as the Rent or agreed to be paid by Tenant, and for interest and costs together with an attorney's commission of five percent (5%) thereof. The foregoing power of attorney shall not be exhausted by any one exercise thereof, but judgment may be confessed as aforesaid from time to time and as often as any of the Rent shall fall due or be in arrears, and such powers may be exercised as well after the expiration of the Term and during any extension thereof, but PGW may file a true copy thereof at the time of the entry of such judgment or judgments.

9. When this Lease shall be determined broken by condition, either during the Term or any extension thereof, and also when and as soon as the Term hereby created or any extension thereof shall have expired, it shall be lawful for any attorney as attorney for the Tenant to file an agreement for entering in any competent court an action or suit and to CONFESS JUDGMENT IN EJECTMENT AGAINST TENANT and all persons or entities claiming under Tenant for the recovery by PGW of possession of the Leased Premises, for which this Lease shall be sufficient warrant; whereupon, if PGW so desires, a writ of habere facias possessionem may issue forthwith, without any prior writ or proceeding whatsoever, and provided that, if for any reason after such action shall have been commenced the same shall be determined and the possession of the Leased Premises hereby demised shall remain in or be restored to Tenant, PGW shall have the right, upon any subsequent default or defaults or upon the termination or expiration of this Lease, to bring one or more actions or suits to recover possession of the Leased Premises. In any action or suit of ejectment, PGW shall first cause to be filed in such action or suit an affidavit made by it or someone acting for it setting forth the facts necessary to authorize the entry of judgment, and, if a true copy of this Lease (and of the truth of the copy of such affidavit shall be sufficient evidence) shall be filed in such action, it shall not be necessary to file the original as a warrant of attorney, any rule of court, custom or practice to the contrary notwithstanding.

10. Tenant, for itself and on behalf of any and all persons claiming through or under it (including creditors of all kinds), does hereby waive and surrender all right and privilege which they or any of them might have under or by reason of any present or future law, to redeem the premises or to have a continuance of this Lease for the Term, as it may have been extended, after having been dispossessed or ejected therefrom by process of law or under the terms of this Lease or after the termination of this Lease as herein provided.

11. Neither this Lease nor any rights or privileges hereunder shall be an asset of Tenant in any bankruptcy, insolvency or reorganization proceeding. If PGW shall not be permitted to terminate this Lease because of the provisions of the United States Bankruptcy Code, Tenant or any trustee for it shall, within fifteen(15) days upon request by PGW to the Bankruptcy Court, assume or reject this Lease unless all (i) defaults hereunder shall have been cured, (ii) PGW shall have been compensated for any monetary loss resulting from such default and (iii) PGW shall be provided with reasonably adequate assurance of full and timely performance of all provisions, terms and conditions of this Lease on the part of Tenant to be performed.

The failure or delay on the part of either party to enforce or exercise at any time any of the provisions, rights or remedies in this Lease shall in no way be construed to be a waiver thereof, nor in any way to affect the validity of this Lease or any act hereof, or the right of the party to thereafter enforce each and every such provisions, right or remedy. No waiver or any breach or default of this Lease shall be held to be a waiver of any other or subsequent breach or default. The receipt by PGW of the Rent at a time when the Tenant is in default under this Lease shall not be construed as a waiver of such default. The receipt by PGW of a lesser amount than the Rent due shall not be construed to be other than a payment on account of the Rent then due, nor shall any statement on Tenant's check or any letter accompanying Tenant's check be deemed an accord and satisfaction, and PGW may accept such payment without prejudice to PGW's right to recover the balance of the Rent due or to pursue any other remedies provided in this Lease. No act or thing done by PGW or PGW's agents or employees during the Term and any extension thereof shall be deemed an acceptance of a surrender of the Leased Premises, and no agreement to accept such a surrender shall be valid unless in writing and signed by PGW.

C. **PGW's Right to Cure.** PGW may perform, in whole or in part, any obligation of which Tenant is in default, either prior to or following the maturation of such default into an Event of Default, and Tenant shall pay on demand as Additional Rent any expenditures made pursuant hereto and the amount of any obligations incurred in connection herewith, plus per annum interest at the Default Rate from the date of any such expenditure, and PGW's performance shall not constitute a cure of such default by Tenant.

D. **PGW's Expenses.** Tenant shall be responsible for all of PGW's costs and expenses, including attorneys' fees, in enforcing any and all provisions of this Lease. All such costs and expenses shall constitute Additional Rent, shall accrue interest at the Prime Rate from the date of such expenditure, and shall be payable by Tenant to PGW immediately upon demand.

13. **SUBORDINATION.**

A. **Generally.** This Lease shall be subject and subordinate at all times to the lien of any mortgages and/or other encumbrances now or hereafter placed on the

Leased Premises or the Land without the necessity of any further instrument or act on the part of the Tenant to effectuate such subordination, but the Tenant covenants and agrees to execute and deliver upon demand such further instrument or instruments evidencing such subordination of this Lease to the lien of any such mortgage or mortgages and/or ground rent and/or other encumbrances as shall be desired by any mortgagee or proposed mortgagee or by any person. Tenant hereby appoints the PGW attorney-in-fact of Tenant irrevocably to execute and deliver any such instrument for and in the name of Tenant. Notwithstanding the foregoing, the party secured by any such mortgage, lease or encumbrance (the "Secured Party") shall have the right to recognize this Lease and, in the event of any foreclosure sale or other possession, by a Secured Party, this Lease shall continue in full force and effect at the option of the Secured Party, and Tenant shall execute, acknowledge and deliver any instrument that has for its purpose and effect a subordination to the lien of this Lease.'

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

1. Until it has given written notice of such act or omission to the holder of each such mortgage or lease; and

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

14. **SURRENDER AND HOLDING OVER.**

A. **Surrender.** The Lease shall terminate and Tenant shall deliver up and surrender possession of the Leased Premises on the last day of the Term hereof, and Tenant waives the right to any notice of termination or notice to quit. Tenant covenants that upon the expiration or sooner termination of this Lease, Tenant shall deliver up and surrender possession of the Leased Premises in the same condition in which Tenant has agreed to keep the same during the continuance of the Lease and in accordance with the terms hereof, normal wear and tear excepted.

B. **Hold Over.** Upon the failure of the Tenant to surrender possession of the Leased Premises upon the expiration or sooner termination of this Lease, Tenant shall pay to PGW, an amount equal to one hundred fifty percent (150%) of the Rent required to be paid under this Lease immediately prior to the expiration or termination of the Term as applied to any period in which Tenant shall remain in possession after expiration or sooner termination of this Lease. Otherwise, such holding over shall be on the terms and conditions set forth in this Lease as far as applicable. PGW may, but shall not be required to, and only on written notice to Tenant after the expiration of the Term hereof, elect to treat such holding over as an extension of the Term on a month-

to-month basis for an additional period of up to one (1) year (as PGW shall so elect), to be on the terms and conditions set forth in this Lease and at the amount as specified in this Section 14.B.

15. **LIEN.** To secure all of its obligations under the Lease, Tenant hereby grants PGW a first priority security interest in the personal property and all fixtures located at the Leased Premises necessary, useful or desirable in connection with the operation of the Leased Premises, including without limitation all furniture, fixtures, equipment, machinery, furnishings, inventory, goods, appliances and other property of every kind and nature (excluding Tenant's) whatsoever.

16. **ESTOPPEL CERTIFICATES.** Tenant shall, from time to time, upon written request of PGW, execute, acknowledge and deliver to PGW or its designee a written statement stating the date this Lease was executed and the date it expires; the date Tenant entered into use of the Leased Premises; the amount of the Rent and the date to which such Rent has been paid; and certifying that this Lease is in full force and effect and has not been assigned, modified, supplemented or amended in any way; that this Lease represents the entire agreement between the parties; that all conditions under this Lease to be performed by PGW have been satisfied; that all required contributions by PGW to Tenant on account of Tenant's improvements have been received; that on the specified date there are no existing defenses or offsets which the Tenant has against the enforcement of this Lease by PGW; and any other requested matter affecting this Lease and any statements by Tenant affecting the correctness of the requested statements. It is intended that any such statement delivered pursuant to this Section 16 may be relied upon by a prospective purchaser of PGW's interest or a mortgagee of PGW's interest or assignee of any mortgage upon PGW's interest in the Land.

17. **INSTALLATIONS AND ALTERATIONS BY TENANT.**

A. **No Alterations.** Except as expressly provided herein, Tenant shall make no alterations, additions or improvements in or to the Leased Premises without PGW's prior written approval in each instance obtained. Any such alterations, additions or improvements shall: (i) be in accordance with complete plans and specifications approved by PGW, (ii) be performed in a good and workmanlike manner and in compliance with all applicable laws, (iii) be made only by contractors or mechanics approved by PGW and who (A) carry general liability and property damage insurance in type and amount acceptable to PGW and (B) have filed lien bonds, lien waivers or the like in such form as is acceptable to PGW in PGW's sole discretion, (iv) be made at Tenant's sole expense and at such times and in such manner as PGW may from time to time designate, and (v) become part of the Leased Premises and the property of PGW. Unless otherwise stated in PGW's consent, PGW reserves the right to require such alterations, additions or improvements placed in or upon the Leased Premises by Tenant, or portions thereof, to be removed by Tenant at Tenant's expense prior to the expiration of the Term.

B. **Tenant's Removable Property.** All articles of personal property and all machinery and equipment and furniture owned or installed by Tenant or solely at its expense in the Leased Premises ("Tenant's Removable Property") shall remain the property of Tenant and may be removed by Tenant at any time prior to the expiration of this Lease, provided that Tenant, at its expense, shall repair any damage to Leased Premises caused by any such installation or removal.

C. **Labor Compatible.** In the course of any work being performed by Tenant, including without limitation work on any of Tenant's Removable Property, Tenant agrees to use labor compatible with that being employed by PGW for work in or on the Land or other property owned by PGW, and not to employ or permit to use any labor or otherwise take any action which might result in a labor dispute involving personnel providing services to PGW or other properties owned or managed by PGW or PFMC.

E. **Increase in Taxes.** If Tenant shall make or cause to be made at its own expense any alteration, addition or improvement to the Leased Premises which shall result in an increase in the Taxes then Tenant shall pay, in addition to the Rent and other charges, the entire increase in such Taxes attributable to such alteration, addition or improvement.

18. **NET LEASE.** It is the intention of PGW and Tenant that the Rent payable hereunder shall be an absolutely net rent to PGW for the Term of this Lease, undiminished by Taxes or any other charges, and except as otherwise expressly stated herein, any and all costs and expenses related to the Leased Premises and the use thereof shall be the sole responsibility and obligation of Tenant.

19. **ENVIRONMENTAL MATTERS.**

A. **Compliance with Law.**

Tenant shall conduct all of its operations on the Leased Premises in compliance with all statutes, ordinances, regulations, and orders now existing or hereafter enacted by any applicable authority or requirements of common law in any way pertaining to the environment and concerning (A) its operations, (B) construction of any improvements, (C) handling of any materials, (D) discharge of any emission, or (E) storage, treatment, or disposal of any waste at or connected with Tenant's operations at the Leased Premises ("Environmental Statutes"). Tenant shall obtain all permits, leases, or approvals and shall make all notifications as required by Environmental Statutes. Tenant shall at all times comply with the terms and conditions of any such permits, leases, approvals, or notifications. In addition, Tenant shall take similar precautions in connection with materials and substances used in Tenant's operations on the Leased Premises which even if not regulated by law or requirements as aforesaid, may or could pose a hazard to the environment, or the health or safety of the current or future occupants of the Leased Premises, or the PGWs or occupants of property adjacent to or in the vicinity of the Leased Premises ("Restricted Activities").

Tenant shall provide to PGW copies of:

(i) applications or other materials to be submitted to any governmental agency in compliance with Environmental Statutes except for proprietary information which might be contained in such applications or other materials which may be inspected at the Leased Premises;

(ii) any notification to be submitted to any person pursuant to Environmental Statutes with respect to the existence of a potentially adverse environmental impact of a condition on the Leased Premises or related proceedings;

(iii) any permit, lease, approval, or amendment or modification thereto granted pursuant to Environmental Statutes;

(iv) upon PGW's request at reasonable times any record or manifest required to be maintained pursuant to Environmental Statutes; and

(v) any notice of violation, summons, order, complaint, or any correspondence threatening or relating to any of the foregoing received by Tenant pertaining to compliance with Environmental Statutes or in connection with Restricted Activities.

B. **Site Contamination.** Tenant shall not cause, aggravate, or contribute to contamination of the Leased Premises arising from Restricted Activities or by "hazardous substances" within the meaning of the Federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601-9657, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (Oct. 17, 1986), "regulated substances" as defined in title I of the federal Resource Conservation and Recovery Act, 42 U.S.C. §§6991-6991i, as amended by section 205 of the Superfund Amendments and Reauthorization act of 1986, and "hazardous waste" as defined under the Pennsylvania Solid Waste Management Act, Pa. Stat. Ann. tit. 35 §§6018.101 to 6018.1003 (Purdon Supp. 1986), as amended from time to time, or any laws which may be enacted in the future concerning protection of the environment by federal, state or local governmental authorities. Tenant shall at all times handle hazardous substances, regulated substances, hazardous wastes and materials and substances in connection with Restricted Activities in a manner which will not cause an undue risk of contamination of the Leased Premises. For purposes of this Section 19, the term "contamination" shall mean the uncontained presence of hazardous substances, regulated substances, hazardous waste or damage resulting from Restricted Activities at the Leased Premises or arising from the Leased Premises.

C. **Indemnification.** Tenant hereby agrees to indemnify, defend and to hold harmless PGW of, from, and against any and all expense, loss, or liability suffered by PGW by reason of Tenant's breach of any of the provisions of this Section 19 whether

direct or indirect, foreseen or unforeseen including (but not limited to): (i) any and all reasonable expenses that PGW may incur in complying with any Environmental Statutes, (ii) any and all reasonable costs that PGW may incur in studying or remedying any contamination, (iii) any and all fines or penalties assessed upon PGW by reason of failure of Tenant to comply with the provisions of this Section 19, (iv) any and all loss of value of the Leased Premises by reason of such failure to comply, and (v) any and all legal rents and costs incurred by PGW in connection with any of the foregoing.

D. **Inspection.** PGW may, at reasonable times after reasonable advance notice and in the presence of an employee or agent of Tenant, except in the event of an emergency, enter the Leased Premises to conduct reasonable inspections, tests, samplings, or other investigations in connection with Tenant's obligations under the provisions of this Section 19.

E. **Remedies.** Upon breach by Tenant of any provision of this Section, Tenant shall be responsible to promptly notify PGW and effect a cure of said breach, at Tenant's sole cost. Tenant's efforts shall be to PGW's reasonable satisfaction and may, if required by PGW, include remediation of contamination in accordance with all applicable environmental and other laws. Said remediation shall be to a cleanup standard that at a minimum complies with all applicable laws, and in addition is acceptable to the satisfaction of PGW. If Tenant shall fail to commence such efforts within 15 days of notice from PGW, PGW may at its sole discretion, terminate Tenant's tenancy by written notice to Tenant, whereupon Tenant shall immediately vacate and PGW may immediately reenter the Leased Premises. Further, the parties recognize that no adequate remedy at law may exist for a breach of this Section 19. Accordingly, PGW may obtain specific performance of any provision of this Section 19. This Section 19 shall not be construed to limit any remedies which PGW may have against Tenant at law or equity for a breach of this Section.

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

G. **Pre-Existing.** Tenant is not responsible for remediation or removal of any hazardous substances existing at the Premises prior to the term of this Lease ("Pre-Existing Condition"), including, but not limited to asbestos, PCBs or mold. Notwithstanding the forgoing, Tenant shall not add to, aggravate, or exacerbate in any way any such Preexisting Condition. Any costs relating to or arising from aggravation of or contribution to any pre-existing conditions that arise from or is caused by the acts or omissions of Tenant, its agents, employees, licensees, invitees, or any other persons or entities acting by, through, under or on behalf of Tenant, shall be the responsibility of Tenant.

20. TENANT'S REPRESENTATIONS AND WARRANTIES. Tenant represents and warrants to PGW that:

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

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

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

21. NON-DISCRIMINATION.

A. **Local Requirements.** This Lease is entered into under the terms of the Philadelphia Home Rule Charter and in the exercise of the privileges herein granted, Tenant shall not discriminate nor permit discrimination against any person because of race, color, religion, national origin, sex, sexual orientation or ancestry. Without limiting any other provision of this Lease, Tenant agrees to comply with the Fair Practices Ordinance of the City of Philadelphia (Section 9-1100 of the Philadelphia Code), as amended from time to time. Tenant covenants and agrees that in accordance with Chapter 17-400 of the Philadelphia Code, payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment, on the basis of race, color, religion, national origin, ancestry, sex, sexual orientation or physical handicap constitutes a substantial breach of this Lease entitling PGW to all rights and remedies provided in this Lease or otherwise available in law or equity.

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

C. Tenant further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the Philadelphia Code. Failure to so cooperate shall constitute a substantial breach of this Agreement entitling PGW to all rights and remedies provided herein or otherwise available in law or equity.

22. QUIET ENJOYMENT.

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

B. **PGW's Right to Enter.** Notwithstanding the provisions of Section 22.A, PGW shall have the right, upon reasonable oral or written notice to Tenant (or without any notice whatsoever in case of emergency), to enter upon the Leased Premises for the purpose of inspecting same and/or of making any repairs thereto and performing any work thereon (including any which may be necessary by reason of Tenant's failure to make any repairs or perform any maintenance work required to be performed by Tenant, and also including the right to install, maintain, repair, replace or remove water or sewer pipes, electrical lines, gas pipes, or any other utilities or services on the Leased Premises). Except in case of emergency, the privilege and right of entry shall be exercised at reasonable times and at reasonable hours, and without unreasonable interruption or disruption to Tenant's activities and operations in the Leased Premises.

23. **INDEMNIFICATION, HOLD HARMLESS, LIABILITY.**

A. **Indemnity.** Tenant shall indemnify, defend and hold harmless PGW, its agents, employees, boards, and commissions from and against any and all suits, claims, causes of action, liabilities, losses, costs and expenses (including without limitation, attorneys' fees) of every kind (whether or not arising from the negligence or willful misconduct of PGW after the effective date of this Lease Agreement) relating to or arising in connection with:

(i) Any act or omission of Tenant, its agents, directors, officers, PGWs, employees, members, contractors, subcontractors, tenants, subtenants, or invitees in, on or about the Leased Premises, or in, on or about any street, alley, sidewalk, curb or passageway, the primary purpose of which is to provide access to, or use of, the Leased Premises;

(ii) Any use, nonuse, possession, occupation, condition, operation, maintenance, construction, or management of the Leased Premises;

(iii) Any accident, injury, death or damage to any person or property or any other occurrence:

(a) in or on the Leased Premises; or

(b) in or on any street, sidewalk, curb or passageway, the primary purpose of which is to provide access to, or use of the Leased Premises;

(iv) Any accident, injury, death or damage to any person or property at the Leased Premises caused, in whole or in part, by Tenant, its agents, directors, officers, PGWs, employees, members, contractors, subcontractors, or sub-tenants;

(v) Any breach, violation or nonperformance of any covenant, term or condition of this Lease to be performed or observed by Tenant, or of any agreements or record concerning the Leased Premises, or of any restrictions of record or of any laws, ordinances, statutes, rules, codes or regulations, affecting the Leased Premises, or any part of the Leased Premises, or the occupancy or use thereof;

(vi) Any encroachment of Improvements made by Tenant upon property adjoining the Leased Premises; and

(vii) Any tax attributable to the execution, delivery or recording of this Lease.

B. **Defense of Proceedings.** In case any action or proceeding is brought against PGW by reason of any matter referred to in this Section 23, Tenant, upon written notice from PGW, shall at Tenant's sole cost and expense, resist or defend such action or proceeding by counsel approved by PGW in writing, provided that no approval of counsel shall be required in each instance where the action or proceeding is resisted or defended by counsel of an insurance carrier obligated to resist or defend such action or proceeding, and further provided that PGW may engage at its expense its own counsel to participate in the defense of any such action.

C. **No Waiver.** Notwithstanding anything contained in this Lease to the contrary, nothing in this Lease shall waive, or be construed to waive, any power or authority of PGW under all applicable laws, ordinances, statutes, rules and regulations.

D. **Survival of Obligations.** The provisions of this Section 23 as they apply to occurrences, or actual or contingent liabilities arising during the Term of this Lease shall survive the expiration or any earlier termination of this Lease.

E. **Application of Environmental Obligations.** The indemnification and liability to the PGW by Tenant as set forth above, shall also apply to any and all environmental matters and shall also include but not be limited to Tenant's duty to pay any fines and satisfy any punitive measures imposed upon PGW by governmental agencies and Tenant's duty to pay PGW for any costs or liability incurred by PGW in connection with safety measures, containment and/or clean-up of environmental matters arising out of Tenant's use or possession of the Leased Premises.

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

to indemnify, defend and hold PGW harmless from and against any and all claims, suits, proceedings, damages, obligations, liabilities, attorney's fees, costs, losses, expenses, orders and judgments imposed upon, incurred by or asserted against PGW pertaining to brokers or agents.

25. PFMC LIABILITY. It is understood and agreed that in entering into this Lease, PFMC does so solely in its capacity as operator and manager of the municipally-owned Philadelphia Gas Works under the Agreement dated December 29, 1972 between PFMC and the City of Philadelphia, as amended from time to time, and not otherwise; and further, that any payments required to be made by PFMC as a result of or arising out of its entering into this Lease shall be made solely from the revenues of Philadelphia Gas Works.

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

If to PGW:

Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
Attention: Hans Greene/Facilities

with a copy to:

Philadelphia Gas Works
Abby Pozefsky, Esquire
Senior Vice President and General Counsel
800 W. Montgomery Avenue
Philadelphia, PA 19122

If to Tenant:

Elliott-Lewis Corporation
Attention: Robert Sautter
2900 Black Lake Place
Philadelphia, PA 19154

with a copy to:

Elliott-Lewis Corporation
Attention: Kenneth Meehan
2900 Black Lake Place

Philadelphia, PA 19154

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

27. CERTIFICATION OF NON-INDEBTEDNESS.

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

B. Requirement for subtenants. Tenant shall require all subtenants under this Lease to be bound in writing by the following provision and Tenant shall cooperate fully with PGW in exercising the rights and remedies described below or otherwise available at law or in equity:

"Subtenant hereby certifies and represents that Subtenant and Subtenant's parent company(ies), affiliates and subsidiary(ies) are not currently indebted to PGW, the City of Philadelphia and/or PFMC and will not at any time during the term of Tenant's Lease with PGW, including any extensions or renewals thereof, be indebted to said entities for or on account of any delinquent sums (including, but not limited to gas use, or taxes collected by the City of Philadelphia for itself or on behalf of the School District of Philadelphia), liens, judgments, rents or other debts for which no written agreement or payment plan satisfactory to the applicable entity has been established. In addition to any other rights or remedies available to PGW at law or in equity, Subtenant acknowledges that any breach or failure to conform to this certification may, at the option and direction of PGW, result in the withholding of payments otherwise due to Subtenant for services rendered in connection with the Agreement and, if such

breach or failure is not resolved to PGW's satisfaction within a reasonable time frame specified by PGW in writing, may result in the offset of any such indebtedness against said payments otherwise due to Subtenant and/or the termination of Subtenant for default (in which case Subtenant will be liable for all excess costs and other damages resulting from the termination)."

28. **MISCELLANEOUS PROVISIONS.**

A. **Force Majeure.** PGW shall be excused for the period of any delay in the performance of any obligations hereunder when prevented from so doing by cause or causes beyond PGW's control which shall include, without limitation, all labor disputes, inability to obtain any material or services, civil commotion or Acts of God.

B. **No Recordation.** This Lease shall not be filed or recorded in any office of public record, and recordation hereof by Tenant shall constitute a default hereunder.

C. **Governing Law; Jurisdiction.** This Lease shall be construed, governed and enforced in accordance with the laws of the Commonwealth of Pennsylvania. PGW and Tenant agree to submit to the exclusive jurisdiction of courts, whether federal or state, located in Philadelphia, Pennsylvania.

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

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

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

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

H. **Time of the Essence.** It is expressly understood and agreed that with respect to all responsibilities, covenants and conditions of Tenant herein, time is of the essence of this Lease. All payments are due by 4:00 pm on the due date. Any payment submitted by Tenant to cure a financial default must be received no later than

4:00 pm on the final day of the cure period or such payment will not be accepted by PGW as a cure of the default.

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

29. **INDEMNIFICATION OF CITY AND PFMC.** Tenant agrees that wherever in this Lease Agreement Tenant has agreed to indemnify PGW, including without limitation, Sections 9, 19.C and 23.A, said duty of indemnification will extend to the Philadelphia Facilities Management Corporation ("PFMC"), and the City of Philadelphia, and their respective officers, employees, directors, boards, commissions and agents.

City of Philadelphia

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

PGW:

PHILADELPHIA GAS WORKS by
PHILADELPHIA FACILITIES MANAGEMENT
CORPORATION

Attest: _____

By: _____

Its: _____

Name: _____

Its: _____

TENANT:

ELLIOTT-LEWIS CORPORATION

Attest: _____

By: _____

Its: _____

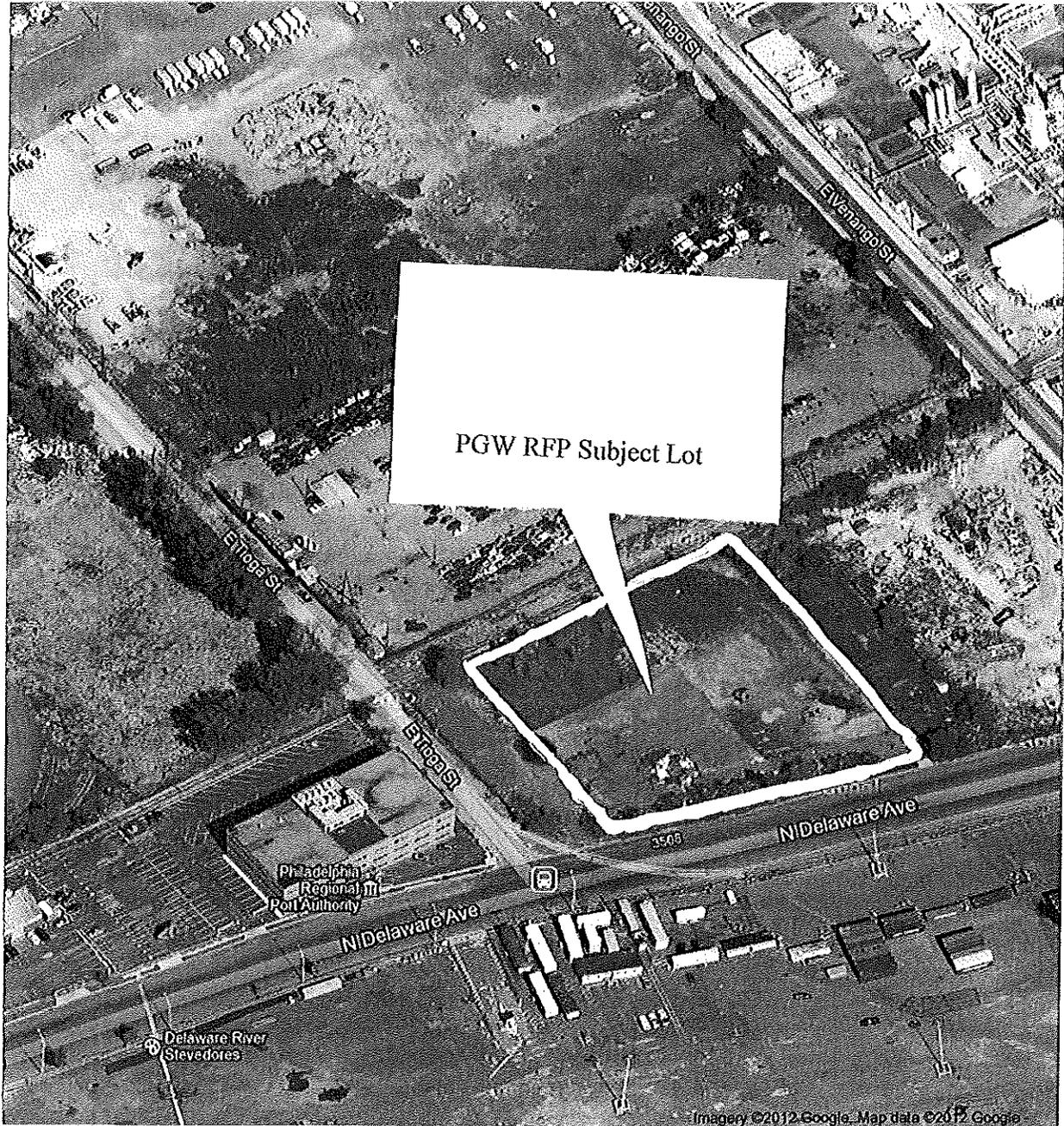
Name: _____

Its: _____

(Corporate Seal)

EXHIBIT "A"

LEASED PREMISES



City of Philadelphia

BILL NO. 130631 continued