

# City of Philadelphia



(Bill No. 160366)

## AN ORDINANCE

Authorizing the Commissioner of Public Property, on behalf of the City of Philadelphia, to lease to the Rosemary Montagno Senior Center, Inc., the premises located at 12601 Townsend Road, under certain terms and conditions.

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

SECTION 1. The Commissioner of Public Property on behalf of the City of Philadelphia is hereby authorized to lease to the Rosemary Montagno Senior Center, Inc., premises located at 12601 Townsend Road, pursuant to terms substantially set forth in the document attached hereto as Exhibit "A".

SECTION 2. The City Solicitor is hereby authorized to review and approve the lease and other documents necessary to effectuate this Ordinance, which lease shall contain such terms and conditions as the City Solicitor deems necessary and proper to protect the interests of the City and to carry out the purposes of this Ordinance.

SECTION 3. The Chief Clerk of the Council shall keep a copy of Exhibit "A" on file and make it available for inspection and review by the public.

**Exhibit "A"**

LEASE AGREEMENT

This Lease Agreement ("Lease") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2016, by and between THE CITY OF PHILADELPHIA, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania and acting through its Department of Public Property ("City") and ROSEMARY MONTAGNO SENIOR CENTER, Inc., a Pennsylvania non-profit corporation ("Tenant").

BACKGROUND

A. City is the owner of a certain parcel of land in Philadelphia, Pennsylvania, and all the buildings and improvements thereon, located at the northeast corner of Byberry-Southampton Road and Townsend Road, commonly known as 12601 Townsend Road (the "Premises").

B. City took title to the from the Philadelphia Authority for Industrial Development ("PAID") subject to an existing lease between PAID and Tenant (the "Original Lease").

C. Under the Original Lease, Tenant occupies and operates the Premises as the Far Northeast Senior, later to become Rosemary Montagno Senior Center (the "Senior Center")

D. The Original Lease terminated on July 9, 2015. Since the termination of the Original Lease, Tenant has occupied the Premises as a holdover Tenant, subject to the terms and conditions of the Original Lease.

E. Tenant now desires, and the City is willing, to enter into a new lease for the Premises.

NOW, 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.

"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, 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.

“**City**” is defined in the preamble and includes the City’s officials, officers, employees, departments, boards, commissions, agents, representatives, successors and assigns.

“**Contamination**” means a Hazardous Substance in, on or under the Premises and the Improvements, or either of them, that is not contained in accordance with Applicable Laws and that requires remediation or removal under any Applicable Law.

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

“**Commissioner**” or “**Commissioner of Public Property**” shall mean the Commissioner of Public Property of the City of Philadelphia.

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

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

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

“**Hazardous Substances**” means any hazardous or toxic substances, materials or wastes, including, but not limited to, those substances, materials, and wastes listed by the Environmental Protection Agency as hazardous substances (40 CFR Part 302); Hazardous Substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*; Hazardous Substances as defined in the Toxic Substances Control Act, 15 U.S.C. § 2601-2671; and all substances now or in the future designated as “hazardous substances,” “hazardous materials,” “hazardous wastes,” or “toxic substances” under any other federal, state or local laws or in any regulations adopted and publications promulgated pursuant to those laws, and amendments to all those laws, regulations, and publications, or substances, materials, and wastes which are or become regulated under any applicable local, state or federal law. Without limiting the preceding definition, Hazardous Substances include but are not limited to asbestos, explosives, radioactive material, medical waste, infectious materials, petroleum and petroleum products.

“**Improvement and Improvements**” have the meaning given them in Section 6.1.

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

“**Lease Ending Date**” has the meaning given it in Section 3.1

“**Maintain**” and “**Maintenance**” have the meaning given them in Section 7.1.1.

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

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

“Premises” has the meaning given it in Background Paragraph A.

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

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

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

“Risk Manager” means the Risk Manager of the City.

“Tenant” has the meaning given it in the preamble and includes Tenant’s permitted successors and assigns.

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

**ARTICLE 1**

**PREMISES; CONDITION; ENVIRONMENTAL MATTERS**

**1.1** Lease. Starting as of the Commencement Date, City leases to Tenant, and Tenant leases from City, the Premises, on the terms and conditions of this Lease.

**1.2** Premises Owned By City. At all times during the Term, the Premises are and will remain owned by the City. 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 interest.

**1.3** Tenant Accepts Premises “AS IS”. Tenant has made such inspections and investigations of the Premises as Tenant deems necessary or desirable. Tenant accepts the Premises without any representation or warranty from City or the City, in their “AS IS” condition, and subject, without limitation, to the following:

1. the zoning applicable to the Premises;
2. the condition of the Premises, including all surface and subsurface conditions;
3. the present uses and non-uses of the Premises;
4. all latent and patent defects and hazards of every nature;
5. title to the Premises;
6. encumbrances, easements, agreements, and restrictions affecting the Premises or use of the Premises;

7. the nature or usability of the Premises, or the use or uses to which the Premises or any part of the Premises may be put, including but not limited to the suitability of the Premises for Tenant’s intended use under this Lease.

1.4 Tenant Has No Recourse. Tenant has no recourse against City as to any of the matters listed in Section 1.3 or any other condition of the Premises.

1.5 No Reliance by Tenant. 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 the 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 Applicable Laws may be amended from time to time.

**ARTICLE 2**  
**USES REQUIRED AND PROHIBITED**

**2.1 Permitted Use.**

- 1. Tenant shall use the Premises only for the operation of the Senior Center.
- 2. Tenant shall not occupy or use the Premises for any purpose or use not expressly permitted by this Lease without City’s prior consent in writing.

**2.2 Tenant Responsible for Safe Use of Premises.**

- 1. Throughout the Term, Tenant shall provide, or by contract arrange for, all services and equipment necessary and desirable to:
  - (a) safely occupy, use, repair, maintain, and operate the Premises,
  - (b) conduct Tenant’s operations in the Premises as permitted by this Lease,
  - (c) fulfill Tenant’s obligations under this Lease, and
  - (d) ensure the safety of persons and property in, on and about the Premises.

2. Tenant assumes sole and complete responsibility and liability for using or occupying the Premises in unsafe condition.

**2.3 Compliance with Applicable Laws.** Throughout the Term, Tenant shall, at its sole cost and expense, promptly comply with all Applicable Laws in Tenant's use, occupation, control and enjoyment of the Premises and its activities under this Lease. Tenant acknowledges that the condition of the Premises may not presently comply with all Applicable Laws. Tenant shall, at Tenant's sole cost and expense and in accordance with the provisions of this Lease, make all Alterations and Repairs to the Premises necessary to cause the Premises to comply with all Applicable Laws.

**2.4 Uses Prohibited: Violation of Applicable Laws; 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: (a) be dangerous, (b) in law constitute a public or private nuisance, or (c) make void or voidable any insurance then in force with respect to the Premises or any part of the Premises.

2. Tenant shall not use, advertise, sell or distribute or permit the use, advertisement, sale or distribution of tobacco products on the Premises. Tenant shall not permit signage related to tobacco products on the Premises. Tenant shall comply with City signage limitations relating to alcoholic beverages. Tenant shall not permit signage of a political nature on the Premises.

3. Tenant shall not permit all or any part of the Premises to be used in any manner that might tend to impair either City's leasehold interest or the City's title to all or any part of the Premises. Tenant shall not permit any part of the Premises to be used in any manner that 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. Throughout the Term, Tenant shall promptly provide to City copies of all citations, summonses, reports, or other notices (however characterized or labeled) received by Tenant that the Premises or any part of the Premises, or Tenant's use, occupancy, or operations, violate any Applicable Laws.

**2.5 Environmental Matters.**

1. **Environmental Compliance.** Beginning on the Commencement Date, Tenant shall at all times promptly comply with applicable Environmental Laws affecting the Premises or the Alterations or the use thereof or the handling, storage or disposal of Hazardous Substances located thereon. Tenant shall maintain or cause to be maintained in effect all permits, licenses or other governmental approvals relating to Hazardous Substances, if any, required by applicable Environmental Laws affecting the Premises, the Alterations, or the use of

the Premises or Alterations. Tenant shall timely make, or cause to be made, all disclosures required by Environmental Laws, and shall timely comply with, or cause compliance with, all valid, final, and non-appealable orders issued by any governmental authority having jurisdiction over the Premises or the Alterations and the use of the Premises or Alterations. Tenant shall take, or cause to be taken, all action required by governmental authorities to bring the Premises and the Alterations and all activities on the Premises or Alterations into compliance with all Environmental Laws affecting the Premises or the Alterations, or the activities on the Premises or Alterations. Tenant shall take all necessary steps to prevent Contamination in, on, or about the Premises or Alterations, whether potentially resulting from conditions existing before the Commencement Date or from and after the Commencement Date.

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

(a) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed, or threatened pursuant to any Environmental Laws;

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

(c) any reports made to any local, state, or federal environmental agency arising out of or in connection with any Contamination.

3. Indemnity for Environmental Matters. Throughout the Term, Tenant shall promptly indemnify, defend (by counsel of an insurance carrier obligated to resist or defend such claim or by other counsel reasonably acceptable to City) and hold harmless City, its respective boards, commissions, departments, employees, agents, representatives, successors and assigns from and against any and all losses, claims, suits, actions, damages, expenses (including but not limited to attorneys' and experts' fees and litigation costs), and liabilities, arising from, related to, or in connection with, the death of or injury to any person or damage to any property whatsoever, or any fine or penalty whatsoever imposed by any governmental authority having jurisdiction under any Applicable Law, arising from or caused in whole or in part, directly or indirectly, by (1) the presence in, on or under the Premises or any of the Improvement of any Hazardous Substance that was first introduced to the Premises during the Term, (2) any discharge or release of any Hazardous Substance in or from the Premises or any Alterations during the Term, (3) Tenant's failure to comply with its covenants under 2.5, or (4) any Hazardous Substance, or material containing Hazardous Substance, that was existing in, on, under or about the Premises or any of the existing buildings or structures thereon.



4. Costs Included; Survival. The indemnity obligations created under this Section 2.5 include, without limitation, whether foreseeable or unforeseeable, any and all costs incurred in connection with any site investigation, and any and all costs for repair, cleanup, detoxification or decontamination, or other remedial action of or relating to the Premises or any of the Improvements. Without in any way limiting the provisions of Section 22.6 below, the provisions of this Article 2.5 survive the Lease Ending Date.

**ARTICLE 3**  
**TERM**

3.1 Term. The term of this Lease (including any validly exercised renewal options, the “**Term**”) shall begin on \_\_\_\_\_, 2016 (the “**Commencement Date**”) and \_\_\_\_\_, 2026 (the “**Lease End Date**”).

3.2 Options to Extend. So long as no Event of Default exists hereunder Tenant shall have the right, subject to approval by the City, to extend the Term for one (1) additional five (5) year term (the “**Renewal Term**”) upon written notice to the City at least one hundred eighty days (180) prior to the Lease End Date.

**ARTICLE 4**  
**RENT**

4.1 Rent. Throughout the Term, Tenant shall pay rent to City in the amount of Twenty Five Dollars (\$25.00) per year (“**Rent**”).

4.2 Additional Rent. Tenant shall promptly pay to City as additional rent (“**Additional Rent**”), without demand and without set-off, retainer, or counterclaim the following:

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 provisions of this Lease;
2. 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 provisions 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 that Tenant may be required to pay to City under any other provision(s) of this Lease.

4.3 Late Payment. For all payments of Rent and Additional Rent, whether in whole or in part, received by City more than five (5) days after the due date, Tenant shall pay interest to City at the rate of seven percent (7%) annually, which will accrue from the due date until Tenant pays any unpaid Rent, Additional Rent and all accrued interest in full.

4.4 Manner of Payment. Tenant shall pay Rent and other sums due City under this Lease by Tenant's plain check payable to City of Philadelphia, mailed to Department of Public Property, City of Philadelphia, Room 790 City Hall, Philadelphia, PA 19107, Attention: Commissioner, or to such other address as the Commissioner directs in writing, or, if the Commissioner directs in writing, by wire transfer of immediately available federal funds to such account as the Commissioner directs in writing.

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

5.1 Utilities. City 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, electricity, telephone, sewer rents, water meter and water charges. City 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, City is solely liable for all late charges, interest, penalties, and fees arising from City's failure to promptly pay all charges and fees imposed by any provider of 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, Tenant, or Tenant's activities on the Premises. Without limiting the requirements set forth above in this Section 5.2, Tenant is solely liable for all late charges, interest, penalties, and fees arising from Tenant's failure to promptly pay any and all Assessments related to the Premises or Tenant's activities on the Premises.

5.3 City Not Obligated to Pay. Throughout the Term, City shall not be obligated to pay any Assessments related to Tenant, the Premises, or Tenant's activities on the Premises.

5.4 Termination of City's Responsibility to Pay Utilities. At any time four (4) years after the Commencement Date, the City shall have the right, in its sole discretion, to terminate its responsibility to pay for Utilities under Section 5.1, without liability to the Tenant for damages or loss of profits that Tenant may have realized if the City had not terminated that responsibility prior to the Lease End Date. In the event that City elects to terminate its responsibilities in accordance with this Section 5.4, such responsibilities shall become the responsibilities of Tenant and Tenant agrees to enter into an amendment to this Lease to reflect the transfer of those responsibilities.

**ARTICLE 6**  
**IMPROVEMENTS AND ALTERATIONS**

**6.1** Definitions: Improvements and Alterations.

1. As used in this Lease, all existing or future improvements, whether permanent or temporary shall be called the “**Improvements**.” In addition, unless otherwise specified, all references to the Premises shall include the Improvements. Separate references to the Premises and Improvements shall not be deemed to exclude the Improvements from the Premises wherever the term “Premises” is used by itself.

2. As used in this Lease, the words “**Alteration**” and “**Alterations**” mean any and all changes and improvements in, on, or to the Premises or any part of the Premises, whether capital in nature or otherwise, including but not limited to demolition, construction, 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 or demolition to existing building or buildings, or construction of any new building or buildings or other structures, and roadways and parking areas of the Premises or any part of the Premises.

**6.2** No Improvements or Alterations Without Prior City Approval. Except as expressly permitted in this Lease, Tenant shall not make, cause, or permit any Improvements or Alterations, without the prior review and written approval of the City. As part of City’s prior review, the Tenant must submit to City detailed plans and specifications for the proposed Improvements and Alterations and all additional information requested by City. City’s approval of any Improvements or Alterations may be conditioned upon a requirement that Tenant obtain one or more bonds satisfactory to the City in all respects and upon other requirements City deems necessary or prudent to protect the interests of the City. City will endeavor to review Tenant’s request for approval of proposed Improvements and Alterations within forty-five (45) days after receipt of Tenant’s request. Failure to inform Tenant of disapproval shall not be construed as approval. Plans and specifications approved by City in accordance with this Section 6.2 are referred to in this Lease as “**Approved Plans**.”

**6.3** Approved Improvements and Alterations. Any plans and specifications for proposed Improvements and Alterations that Tenant submits to City will, upon approval the City, automatically become part of this Lease. Tenant shall make or cause to be made the approved Improvements and Alterations:

1. at Tenant’s sole cost and expense,
2. diligently,
3. in a good and worker-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** Improvements and Alterations Become Part of Premises. Except as expressly provided otherwise by the City in any consent or approval required under this Article 6, all Improvements and Alterations will, upon completion, become part of the Premises and the property of the City.

**6.5** Fixtures. Tenant shall have the right to install any fixtures in or on the Premises. Upon the expiration or earlier termination of this Lease, Tenant must:

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

Tenant’s obligation under this Section 6.5 survives the Lease Ending Date.

**6.6** No Obligation. Throughout the Term, City is not obligated to perform or pay for any Improvements or Alterations to the Premises or any part of the Premises.

**ARTICLE 7**  
**MAINTENANCE, REPAIRS, AND REPLACEMENTS**

**7.1** 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.

**7.2 Maintenance and Repair.** Throughout the Term, Tenant, shall, at its sole cost and expense, promptly Maintain and Repair the Premises. Tenant's obligation to Maintain and Repair the Premises includes, without limitation, the structural and nonstructural parts of the building or buildings and other improvements, both interior and exterior, and the interior and exterior plumbing, mechanical, and fire suppression systems, roofs, exterior walls, interior walls, windows, foundations, water supply systems, sewage disposal systems, storm water management systems, detention basins (including annual cleaning), check valves and pumps, backflow preventers and hot boxes, fire hydrants, heating, ventilation, air conditioning and electrical systems and lighting systems and transformers (including exterior high mast lighting).

**7.3 City Not Obligated to Maintain or Repair the Premises.** Throughout the Term, City is not obligated to Maintain or Repair the Premises or any part of the Premises and is not obligated to pay for any Maintenance or Repair of the Premises.

**7.4 Maintenance and Repair of Alterations.** All Maintenance and Repairs that are Alterations are subject to the requirements of Article 6 above. If an emergency occurs on the Premises that poses a threat of imminent danger to the health or safety of any persons, animals, or property, however, then (1) City may perform all Maintenance and Repairs necessary to secure the Premises and prevent injury or property damage, but (2) City shall at its very first opportunity inform Tenant about that Maintenance or Repair and (3) City shall obtain Tenant's prior approval for any additional future Maintenance or Repairs that may be necessary or prudent related to the emergency.

**7.5 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 driveways, sidewalks, curbs, and parking areas.

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 promptly remove graffiti from, or cover graffiti on, the Premises within five (5) days of its application, or any shorter time as may be required by Applicable Law.

4. Tenant shall promptly Maintain the grounds area in and about the Premises in a manner consistent with Tenant's permitted use. Tenant shall not plant or permit the growth of any species of vegetation on the Premises that is identified as invasive to Philadelphia or southeastern Pennsylvania by the Commonwealth of Pennsylvania Department of Agriculture, the National Park Service and United States Fish and Wildlife Service, or the United States Department of Agriculture.

**7.6 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 agents, employees, representatives, 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.

7.7 Security. Throughout the Term, Tenant shall, at its sole cost and expense, subject to Article 6 and the provisions of this Article 7, take all necessary and prudent measures to keep the Premises safe and secure against break in, fire, and other hazards. Throughout the Term, 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.

**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. Where the estimated cost of any Alteration is Fifteen Thousand Dollars (\$15,000.00) or more, despite City's approval of any plans or specifications, it is a condition precedent to Tenant's right to make the Alteration that Tenant obtain a Labor and Materialmen's Bond in form and substance acceptable to the City.

8.2 No Consent by City to Mechanics or Materialman's Lien. City does not consent or request in any way that any contractor, subcontractor, laborer or materialman perform any labor or furnish any materials for any specific Alteration or other work to the Premises or any part of the Premises. Despite any other provision of this Lease, the Tenant does not have the 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 the City in the Premises or any part of the Premises. Tenant and all of its Contractors are notified by this Section 8.2 that 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. Tenant shall secure a release of liens from all Contractors with each payment thereto.

**ARTICLE 9**  
**INSURANCE**

9.1 General. Throughout the Term, Tenant 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 the Insurance from reputable insurers who are acceptable to the City and authorized to do business in the Commonwealth of Pennsylvania. Tenant shall cause all the 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 professional services by any Contractor 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 such Contractor’s 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 Section 9.1.2, Section 9.1.3, and Section 9.1.4 above.

9.2 Additional Insurance. Throughout the Term, Tenant shall promptly obtain and maintain Insurance against other hazards, risks or perils, and in such amounts, as the City may reasonably request 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 endorsed insured, with proof of endorsement, on all Insurance policies required under this Lease (including Contractors’ Insurance) except the Workers Compensation, Employers’ Liability, Property Insurance, and Professional Liability policies. Tenant shall cause the City of Philadelphia to be named as 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 (or loss payee, as the case may be) is primary to any other coverage available to the City.

9.5 Certificates of Insurance. Prior to the Commencement Date, Tenant must cause certificates of insurance evidencing the required Insurance coverage to be submitted to the City’s Risk Manager (One Parkway Building – 14<sup>th</sup> Floor, 1515 Arch Street, Philadelphia, PA 19102). Tenant shall cause the certificate of insurance, followed by the actual endorsement, to be delivered on or prior to the Commencement Date of this Lease. Tenant shall furnish to City, or cause its insurers to furnish to the City, certified copies of the original policies of all Insurance required under this Lease at any time within ten (10) days after written request by 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 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 the Insurance policies to provide that the insurers will give at least thirty (30) days prior written notice 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 before the expiration of each Insurance policy, Tenant shall deliver, or cause to be delivered, to the City's Risk Manager a certificate of insurance evidencing the replacement policy(ies) that will become effective immediately upon the termination of the previous policy(ies).

**9.8** City and City Not Limited in Proof of Damages. If 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 for the Insurance. Rather, the City may recover as damages for Tenant's failure the uninsured amount of any loss, all damages and expenses of suit and costs, including without limitation reasonable cancellation fees, suffered or incurred during any period when Tenant failed or neglected to provide the required Insurance.

**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 Tenant, 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 any buildings and improvements on the Premises and restoration of the Premises to its condition prior to Tenant's entry onto the Premises subject to the Commissioner's reasonable satisfaction.

**9.11** No Act That Voids or Suspends Insurance. Tenant shall not do or permit any act, matter, or thing that causes, directly or indirectly, all or any of the Insurance to be voided or suspended, or that increases 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 shall immediately notify the City whenever Tenant or its Contractors obtain separate insurance, and Tenant shall deliver or cause its Contractors to deliver to the City's Risk Manager certificates of insurance and all endorsements in accordance with Section 9.5 above and, promptly following request by the City, certified copies or duplicate originals of the policies.

**ARTICLE 10****LIABILITY FOR PREMISES; INDEMNIFICATION; RELEASE**

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

**10.2 Indemnification.** Tenant shall promptly indemnify and defend 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, officers, directors, employees, representatives, licensees, invitees, and guests, and Tenant's subtenants (if any); (2) Tenant's use, operation, occupancy, Alteration, Maintenance, and Repair of the Premises or any part of the Premises; or (3) Tenant's exercise of any right or performance of any obligation under this Lease; (4) the condition of the Premises or any part of the Premises.

**10.3 Defense.** If any claim, action or proceeding is brought against the City relating to any matter for which Tenant shall indemnify and defend City and 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 the claim, action or proceeding by counsel approved by the City Solicitor in writing; except that (1) no approval of counsel is required in each and every instance where the claim, action, or proceeding is resisted or defended by counsel of an insurance carrier obligated to resist or defend the claim, action or proceeding, and (2) the City may engage at its expense its own counsel to participate in the defense of any claim, action or proceeding.

**10.4 Release.** In consideration for the rights granted to Tenant under this Lease, Tenant, for itself and its Contractors, officers, directors, members, partners, shareholders, agents, employees, representatives, licensees, invitees, and guests and their respective successors and assigns (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) the Original Lease, this Lease and or the Premises; and or (2) the existence, condition, operation, use or occupancy of any part or parts of the Premises. 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, through, or under Tenant, and the public in general, in connection with the Premises.

**10.5 Survival.** Without limiting the generality of Section 22.6, the provisions of this Article 10 survive the Lease Ending Date.

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

**11.1 Material Destruction.** If, in Tenant’s sole judgment, the Premises have been substantially or totally destroyed by any casualty, or if the Premises are damaged so that, in Tenant’s sole discretion, Tenant’s ability to use the Premises for the purposes set forth in this Lease will be impaired for a period greater than one hundred eighty (180) days after the destruction (“**Material Destruction**”), then Tenant may, at its option, terminate this Lease by delivering to City written notice of termination within sixty (60) days after such casualty, and upon City’s receipt of Tenant’s termination notice, this Lease will terminate, subject to Section 22.6.

**11.2 Restoration.** If Tenant is not permitted to terminate this Lease pursuant to Section 11.1 above, or if does not elect to terminate the Lease pursuant to Section 11.1 above, Tenant shall promptly Repair the Premises damaged by the Material 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 the Property Insurance proceeds to Tenant or Tenant’s Contractors upon Tenant’s presentation to the City of detailed invoices for completed Repairs of the Material Destruction, or at such earlier time as the City determines in its discretion.

**ARTICLE 12**  
**CONDEMNATION**

**12.1 Total Condemnation.** If all the Premises are taken under condemnation proceedings or by eminent domain, or in the event of a conveyance of all of the Premises in lieu thereof, then this Lease will terminate as of the date title to the Premises vests in the condemning authority, subject to Section 22.6.

**12.2 Partial Condemnation.** If a portion of the Premises is taken under condemnation proceeding or by eminent domain, or in the event of a conveyance of a portion of the Premises by deed in lieu thereof, Rent shall abate as to the portion so taken or conveyed, equitably determined, and this Lease shall continue as to the portion of the Premises remaining. Nevertheless, should Tenant determine, in Tenant’s reasonable judgment, that the portion of the Premises remaining is not sufficient for, or would render impractical, the continuation of Tenant’s use of the Premises, then Tenant shall have the right to terminate this Lease by notice to City of Tenant’s election to do so, such termination to be effective, subject to Section 22.6, as of the date such portion of the Premises vests in the condemning authority.

**12.3 Compensation.** The compensation awarded in, or by reason of, the condemnation of some or all the Premises shall be distributed among Tenant and the City as their interests may appear based upon the loss or damage suffered by each by reason of such taking.

**ARTICLE 13**

**NO SUBLEASES OR ASSIGNMENTS**

**13.1 Sublease Prohibited.** Tenant shall not sublease, assign, transfer, or delegate this Lease, or any of Tenant’s rights or duties under this Lease, either in whole or in part, or mortgage, pledge or otherwise encumber this Lease or Tenant’s leasehold estate in the Premises.

**13.2 Purported Sublease Void.** Any purported sublease or assignment, transfer, or delegation by Tenant in violation of Section 13.1 is void and will be deemed an offer by Tenant to City to immediately terminate this Lease, which City may accept or reject in City’s sole discretion.

**ARTICLE 14**

**TENANT’S CORPORATE STATUS**

**14.1 Tenant’s Corporate Status.** Tenant represents and warrants that it is a non-profit corporation organized, and subsisting under the laws of the Commonwealth of Pennsylvania.

**ARTICLE 15**

**CITY PROVISIONS**

Tenant agrees, in the performance of its rights and obligations under this Lease, to comply with the City Standard Provisions, as set forth in **Exhibit “A”**, attached hereto and made a part hereof.

**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, Tenant may peaceably and quietly occupy and enjoy the Premises for the Term without hindrance or interruption by City or anyone lawfully claiming through City. Tenant’s peaceable and quiet enjoyment of the Premises under this Section 16.1 is subject to all the provisions of this Lease, including but not limited to Section 1.3 and City’s right to enter and inspect the Premises provided in Section 16.2 below.

**16.2 City and City Right to Enter Premises.** 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 the City, and any persons authorized by City or the City, to enter all areas of the Premises, at all times between 9:00 a.m. and 6:00 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 this Lease;
2. carrying out any purpose necessary, incidental or connected to the performance of City’s obligations or exercise of the 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 give City two copies of all keys and alarm security codes necessary to obtain access to the Premises and any buildings or enclosures. Tenant shall not change the locks or alarm security codes on or for the Premises without the prior approval of City. If City approves Tenant's request to change any locks or alarm security codes, then upon changing any of the locks or alarm security codes Tenant shall promptly provide City with two copies of the keys for the new locks and the new alarm security codes.

**ARTICLE 17**

**DEFAULT BY TENANT; CITY'S REMEDIES; TERMINATION**

**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 five (5) 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 non-monetary provision of this Lease, and Tenant fails to cure its default on or before fifteen (15) days after 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 at any time fails to strictly comply with Applicable Laws in any respect;
- 6. Tenant's status as a non-profit corporation is revoked; or
- 7. Tenant disbands or ceases to exist as a legal entity.

**17.2 Remedies.** If Tenant commits an Event of Default, then City may, in its sole discretion, do one or more of the following:

- 1. bring legal action to recover all Rent and Additional Rent, and interest on unpaid Rent;
- 2. declare the Lease immediately terminated and upon the termination Tenant shall 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, and upon the suspension Tenant shall immediately vacate the Premises and remove Tenant's property from the Premises in accordance with Article 18 below until the time City reinstates the Lease;
- 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 those 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 City at law or in equity.

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

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

3. 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 City to enforce any of City's rights under this Lease.

4. City is not obligated to mitigate any damages or losses it may suffer by reason of Tenant's Event of Default and City's early termination of this Lease following an Event of Default.

**17.4 Tenant Waives Notice.** Tenant expressly waives, so far as permitted by law, the service of any notice of City's intention to enter or re-enter the Premises provided for in any current or future Applicable Law, or of City's 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. City does not waive 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 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. City cannot 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 signed by City. No waiver by 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 must promptly pay upon demand all of 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.** City's rights and remedies under this Lease are not exclusive of each other. Rather, City may exercise its rights and remedies under this Lease singularly, cumulatively, successively, repeatedly, and in addition to every other right and remedy City may have at law or in equity, or by statute.

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

**18.1 Tenant Must Surrender Premises.** On the Lease Ending Date, 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, free and clear of all liens and encumbrances, and broom clean.

**18.2 Tenant Shall Remove Improvements.**

1. On or before the Lease Ending Date, City may, in its sole discretion, designate in writing to Tenant those Improvements (“**Designated Improvements**”) installed or constructed by Tenant or others that Tenant must remove from the Premises, and Tenant shall then promptly remove those Designated Improvements.

2. Tenant may not make any claim against City for Tenant’s costs or expenses relating to removal of any Designated Improvements, and Tenant shall 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 Alterations on or before ninety (90) days from the later of (1) the Lease Ending Date, or (2) ninety (90) days from the date 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 City’s own property;

(c) dispose of some or all of Tenant’s personal property and Designated Improvements without accountability to Tenant, in any manner as City may see fit, including but not limited to selling some or all of the property and Designated Improvements and retaining the proceeds or demolishing and removing the property and Designated Improvements.

4. If under Section 18.2.3.c above City elects to remove the Tenant’s personal property or the Designated Improvements from the Premises, Tenant shall promptly reimburse 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.** Following the Lease Ending Date, the City is not responsible for any loss or damage occurring to any property owned by Tenant.

**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 Lease Ending Date, then Tenant will be deemed to be occupying the Premises under a month-to-month holdover tenancy, which City may terminate upon thirty (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. To be effective, 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, and

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

**If intended for City:**

Department of Public Property  
City Hall, Room 790  
Philadelphia, PA 19107  
Attention: Commissioner of Public Property

**with copy to:**

The City of Philadelphia Law Department  
1515 Arch Street, 17<sup>th</sup> Floor  
Philadelphia, PA 19102  
Attention: Divisional Deputy City Solicitor, Real Estate  
and Economic Development

**If intended for the Tenant:**

**with copy to:**

**19.2 Timing of Notice Received.** Notice given under this Lease will be deemed delivered upon actual delivery or refusal to accept delivery.

**ARTICLE 20**

**APPROVALS BY CITY; SUBMISSIONS TO CITY**

**20.1 Validity of City Approval.** Unless otherwise stated expressly 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 in writing from the Commissioner of Public Property, or his designee.

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

1. 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 Improvement or Alterations under Article 6 above, does not constitute any representation, warranty, or guarantee by 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. City's review, approval, or consent under this Lease is not a 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**

**LIMITATION ON RECOURSE; CITY'S AND CITY'S RIGHT TO ENFORCE LEASE**

**21.1 Limitation on Recourse.** Tenant specifically agrees to look solely to City's interest in the Premises for the recovery of any judgment, covenant, agreement, obligation, warranty, representation or undertaking under this Lease, or otherwise, from City. It is agreed that City and its officials, officers, employees, agents, and representatives shall not be personally liable for any such judgment or claim issued or arising in connection with this Lease.

**21.2 City May Enforce Lease Strictly.** City may enforce all provisions of this Lease strictly, regardless of (1) any law, usage, or custom to the contrary, (2) any conduct of City in refraining from enforcing any provisions of this Lease at any time, (3) any conduct of City in refraining from exercising its rights and remedies under this Lease, and (4) any course of conduct between City and Tenant. Any conduct or custom between City and Tenant does not in any way or manner modify the City's rights and remedies under this Lease.

**21.3 Amendment and Modification.** This Lease can only be amended, modified or supplemented by City in writing signed by both the City and Tenant. This Lease cannot be amended, modified, or supplemented by any oral representations, whenever made, by any officer, official, commissioner, or employee City. This Lease cannot be amended, modified, or supplemented by any custom or course of conduct between City and Tenant.

**21.4 No Implied Consent.** 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 City's consent to Tenant's request or offer. Tenant shall 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 expressly accepted in writing by the City in accordance with this Lease.

**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.** There are no other third party beneficiaries of this Lease and nothing in this Lease confers any benefit or right upon any party other than City and Tenant.

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

**22.4 Termination of Original Lease.** The Original Lease shall terminate upon the Commencement Date.

**22.4 Captions.** The captions, article headings, and section headings appearing in this Lease are inserted only as a matter of convenience and do not define or limit the scope or intent of the provisions of this Lease nor in any way affect this Lease. References in this Lease to articles, sections, and exhibits refer to articles, sections and exhibits of this Lease.

**22.5 Partial Invalidity.**

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

**2.** Despite Section 22.5.1, if any provision of this Lease is adjudged invalid or unenforceable by a court of competent jurisdiction, and if City reasonably determines that the

invalidity of the provision is a material change to the Lease, then City may, in its sole discretion, terminate this Lease by providing ninety (90) days advance written notice to Tenant.

**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 Lease Ending Date survive and are enforceable after the Lease Ending Date. Any and all liabilities, actual or contingent, that arise in connection with this Lease, survive the Lease Ending Date.

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

**22.8 Venue.** All suits, claims, actions, and counterclaims arising from or related to this Lease must be brought in the Court of Common Pleas for Philadelphia County. City and Tenant consent to the exclusive jurisdiction of the courts of the Commonwealth of Pennsylvania over all suits, claims, actions, counterclaims, and other matters arising under or related to this Lease.

**22.9 Interpretation.** The rule of construing or interpreting any ambiguities in an agreement against the drafter of the agreement does not apply to this Lease.

**22.10 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 shall pay 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.

**22.11 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.

**22.12 Waiver of Jury Trial. TENANT AND CITY, SO FAR AS PERMITTED BY APPLICABLE LAWS, EXPRESSLY, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR IN ANY WAY RELATED TO THIS LEASE. TENANT AND CITY HAVE EACH CONSULTED WITH LEGAL COUNSEL AND UNDERSTAND THAT BY AGREEING TO THIS WAIVER THEY ARE GIVING UP AN IMPORTANT RIGHT THEY EACH HAVE UNDER LAW.**

# City of Philadelphia

BILL NO. 160366 continued

Certified Copy

IN WITNESS OF THE ABOVE, City and Tenant have caused this Lease to be duly executed as of the date first above written.

**CITY:**  
acting through its Department of Public Property,

APPROVED AS TO FORM:  
Sozi Pedro Tulante,  
City Solicitor

By: \_\_\_\_\_  
Divisional Deputy City Solicitor

By: \_\_\_\_\_  
Bridget Collins-Greenwald,  
Commissioner

**TENANT:**  
Rosemary Montagno Senior Center, Inc.

By: \_\_\_\_\_

EXHIBIT A

City Standard Provisions

**Defined Terms**

Capitalized terms used in this Exhibit and not defined herein shall have the meanings ascribed to them in the Lease. Reference in this Exhibit to the “City” shall mean the City of Philadelphia, in its municipal capacity.

**Prohibited Gifts**

Pursuant to Executive Order 03-11, no official or employee in the Executive and Administrative Branch of the City shall solicit or accept, directly or indirectly, anything of value, including any gift, gratuity, favor, entertainment or loan from any of the following sources:

- (1) A person seeking to obtain business from, or who has financial relations with, the City;
- (2) A person whose operations or activities are regulated or inspected by any City agency;
- (3) A person engaged, either as principal or attorney, in proceedings before any City agency or in court proceedings in which the City is an adverse party;
- (4) A person seeking legislative or administrative action by the City; or
- (5) A person whose interests may be substantially affected by the performance or nonperformance of the official’s or employee’s official duties.

Tenant understands and agrees that if it offers anything of value to a City official or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order shall be subject to sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in a particular contract to debarment, depending on the nature of the violation.

Furthermore, if Tenant offers or gives, directly or indirectly, anything of value to any City official or employee in violation of Executive Order 03-11, it will constitute a default by Tenant and entitle City to exercise any rights or remedies available to it under the Lease, at law and in equity.

**Certification of Non-Indebtedness**

(a) Tenant hereby certifies and represents to City that Tenant and Tenant’s parent company(ies) and subsidiary(ies), affiliate(s), if any, are not currently indebted to the City, and will not during the Term of the Lease 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 payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to City at law or in equity, Tenant acknowledges that any breach or failure to conform to this certification may, at the option and direction of City, result in the withholding of payments otherwise due to Tenant in connection with the Lease and, if such breach or failure is not resolved to the City’s satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments otherwise due to Tenant and/or the termination of the Lease for default (in which case Tenant will be liable for all excess costs and other damages resulting from the termination).

(b) Tenant shall require all contractors and subcontractors performing repairs and/or alterations on the Premises or in connection with the Lease to sign a certification of non-indebtedness in favor of the City, which certification shall include the following provisions and Tenant shall cooperate with City in exercising the rights and remedies described below or otherwise available at law or in equity:

“ \_\_\_\_\_ (“Subcontractor”) hereby certifies and represents that Subcontractor and Subcontractor’s parent company(ies) and their 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 dated \_\_\_\_\_, 20\_\_ (“Lease”), 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 payment plan satisfactory to the City has been established. In addition to any other rights or remedies available at law or in equity, Subcontractor acknowledges that any breach or failure to conform to this certification may, at the option and direction of the City, result in the withholding of payments otherwise due to Subcontractor for services rendered in connection with this Agreement and, if such breach or failure is not resolved to the City’s satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments otherwise due to Subcontractor and/or the termination of the Agreement for default (in which case Subcontractor will be liable for all excess costs and other damages resulting from the termination).”

(c) Any breach or failure to conform to the aforesaid certifications shall constitute a default by Tenant and entitle Landlord to exercise any rights or remedies available to it under the Lease, and at law and in equity.

**Fair Practices**

Tenant agrees, in performing the Lease, to comply with the provisions of the Fair Practices Ordinance, Chapter 9-1100 of The Philadelphia Code (as it may be amended from time to time, the “Code”), which prohibits, inter alia, denial of or interference with the employment opportunities of an individual based upon his or her race, ethnicity, color, sex (including pregnancy, childbirth, or a related medical condition), sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, familial status, genetic information, or domestic or sexual violence victim status.

**No Alcohol Advertisements**

Tenant shall not place (or permit placement) on the Land or Improvements any advertisements for alcohol.

**Nondiscrimination**

(a) In accordance with Chapter 17-400 of the 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, or privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a substantial breach

of the Lease entitling City to all rights and remedies provided in the Lease or otherwise available at law or in equity.

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

(c) Tenant further agrees to cooperate with the Commission on Human Relations (the “**Commission**”) 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 Code, and failure to do so constitutes a substantial breach of the Lease entitling City to all rights and remedies provided in the Lease or otherwise available at law or in equity.

**Law Department Fees**

Pursuant to Section 17-700 of the Code, Tenant will be required to pay a contract preparation fee. Regulations promulgated by the City Solicitor currently establish the following schedule of fees for preparation of the initial contract and subsequent amendments, based upon the amounts involved and whether the Tenant is a for-profit or nonprofit entity:

<b><u>Amount of Contract</u></b>	<b><u>Contract Preparation Fee</u></b>
\$0-\$20,000	\$0
\$20,001-\$50,000	\$120
\$50,001-\$100,000	\$170
\$100,001-\$250,000	\$260
\$250,001-\$500,000	\$340
\$500,001-\$1,000,000	\$520
Over \$1,000,000	\$1,000

In its discretion, the Law Department may grant a full or partial waiver of any of the above fees in exceptional cases for good cause shown, such as violation of a grant covenant. Governmental entities are exempt from the fees. The Law Department reserves the right to collect up to twice the stated fee if extensive negotiation is required to reach a final contract with the Tenant.

**21st Century Minimum Wage and Benefits Standard**

(a) Tenant is the “Recipient” of a City lease as provided in Chapter 17-1300 of the Code (“Philadelphia 21st Century Minimum Wage and Benefits Standard”), accessible at <http://www.amlegal.com/library/pa/philadelphia.shtml>. If Tenant or any subcontractor or subrecipient at any tier is also an “Employer,” as that term is defined in Section 17-1302 of the Code (more than 5 employees), and further described in Section 17-1303 of the Code, then absent a waiver, during the Term of the Lease (including any renewal term), in addition to any applicable state and federal requirements, City shall provide, and shall enter into subcontracts and otherwise cause any subcontractors or subrecipients at any tier that are also Employers to provide, their respective covered “Employees,” as that term is defined in Section 17-1302 of the Code (persons who perform work for a covered Employer that arises directly out of the Lease), with at least the minimum wage standard and minimum benefits standard, and required notice thereof, stated in Chapter 17-1300 of the Code (as it may be amended from time to time). A summary of the current requirements is as follows:



(1) Minimum Wage

(.a) for the period through December 31, 2014, provide covered Employees with an hourly wage, excluding benefits, that is no less than \$10.88/hour;

(.b) as of January 1, 2015, provide covered Employees with an hourly wage, excluding benefits, that is no less than \$12/hour;

(.c) commencing as of January 1, 2016, for wages to be provided on and after January 1 of each year during which the Term (including any renewal term) is in effect, provide their covered employees with an hourly wage, excluding benefits, that is no less than the result of multiplying \$12 by the then current CPI Multiplier as annually adjusted. For purposes of determining the minimum hourly wage required, the CPI Multiplier is calculated annually by the City's Director of Finance by dividing the most recently published Consumer Price Index for all Urban Consumers (CPI-U) All Items Index, Philadelphia, Pennsylvania, as of each January 1, by the most recently published CPI-U as of January 1, 2015. The then current minimum hourly wage applicable to City contractors and subcontractors will be posted on the City's web site.

(.d) Notwithstanding the above requirements, the minimum wage required by Chapter 17-1300 may not be less than 150% of the generally applicable federal minimum wage. However, to the extent an increase in the federal minimum wage would increase the required City minimum wage due to the 150% requirement, such new 150% requirement will take effect only at the start of the renewal term, if any, commencing on or after the date of the new federal requirement.

(2) Minimum Benefits

(.a) to the extent an Employer provides health benefits to any of its employees, provide each full-time, non-temporary, non-seasonal covered Employee with health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of the Employer; and

(.b) provide to each full-time, non-temporary, non-seasonal covered Employee at least the minimum number of earned sick leave days required by Code Section 17-1305(2).

(b) If covered, absent a waiver, City shall promptly provide to the City all documents and information as the City may require verifying its compliance, and that of all subcontractors and subrecipients under the Lease, with the requirements of Chapter 17-1300. Each subcontractor and subrecipient that is an Employer shall notify each affected Employee what wages and benefits are required pursuant to Chapter 17-1300.

(c) Absent a waiver, an Employer subject to Chapter 17-1300 shall comply with all their requirements as they exist on the date when the City entered into the Lease with the City or when the Lease is amended. City shall take such steps as are necessary to notify its subcontractors and subrecipients of these requirements, and to cause such subcontractors or subrecipients to notify lower-tier subcontractors and subrecipients of these requirements, including, without limitation, by incorporating this Section of Exhibit "A", with appropriate adjustments for the identity of the parties, in its subcontracts with such subcontractors or subrecipients. A City, subcontractor or subrecipient at any tier subject to Chapter 17-1300 that fails to comply with these provisions may, after notice and hearing before the Director of Finance

or such other officer or agency designated by the Mayor, be suspended from receiving financial assistance from the City or from bidding on and/or participating in future City contracts, whether as a prime contractor or a subcontractor, for up to three (3) years. Council may also initiate a similar suspension or debarment process. Such suspension or debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300 or the Lease.

(d) Without limiting the applicability of Section 17 (Events of Default) of the Lease, Tenant's failure to comply, or the failure of subcontractors or subrecipients at any tier to comply, with the requirements of Chapter 17-1300 shall constitute a substantial breach of the Lease entitling the City to all rights and remedies provided in the Lease or otherwise available at law or in equity.

(e) Tenant's covered Employees shall be deemed third-party beneficiaries of Tenant's representation, warranty, and covenant to the City under this Section of Exhibit A (but not of any other Section of the Lease or this Exhibit A), and the covered Employees of a subcontractor or subrecipient at any tier that is also a covered Employer shall be deemed third-party beneficiaries of their Employer's representation, warranty and covenant to City or City's subcontractors or subrecipients at any tier, as the case may be, under this Section of Exhibit A.

(f) The Office of Labor Standards may grant a partial or total waiver of Chapter 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Code. An overview offering guidance on the applicability of, and requirements placed on City contractors and subcontractors by Chapter 17-1300 of the Code is available on the City's website at <https://secure.phila.gov/eContract/> under the "About" link; see "Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors."

# City of Philadelphia

BILL NO. 160366 continued

Certified Copy

# City of Philadelphia

BILL NO. 160366 continued

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 16, 2016. The Bill was Signed by the Mayor on June 28, 2016.



Michael A. Decker  
Chief Clerk of the City Council