

City of Philadelphia



(Bill No. 070394-A)

AN ORDINANCE

Authorizing the President of the Fairmount Park Commission and the Executive Director of Fairmount Park to enter into a lease agreement between the City of Philadelphia as landlord and the Philadelphia Authority for Industrial Development as tenant for further sublease to Historic Philadelphia, Inc., a certain parcel of land bounded by 6th Street, 7th Street, Race Street, and the Vine Street Expressway, commonly referred to as Franklin Square, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The President of the Fairmount Park Commission and the Executive Director of Fairmount Park are hereby authorized to enter into a lease agreement between the Fairmount Park Commission as landlord and the Philadelphia Authority for Industrial Development as tenant for further sublease to Historic Philadelphia, Inc., a certain parcel of land bounded by 6th Street, 7th Street, Race Street, and the Vine Street Expressway, commonly referred to as Franklin Square, which Lease and Sublease shall be substantially in the form set forth in Exhibit "1" hereto, with such changes as the City Solicitor deems necessary or appropriate to protect the interests of the City.

SECTION 2. The Chief Clerk of City Council shall keep on file the document referred to as Exhibit "1" and shall make it available for inspection by the public during regular office hours.

EXHIBIT "1"
MASTER LEASE

THIS MASTER LEASE AGREEMENT ("**Lease**") dated as of _____ 2007 ("**Effective Date**"), is made by the **CITY OF PHILADELPHIA**, a Pennsylvania body politic, acting through its **FAIRMOUNT PARK COMMISSION**, and the **PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT**, a Pennsylvania body politic and corporation ("**PAID**" or "**Tenant**").

BACKGROUND

A. The City owns the real property in the City of Philadelphia, Philadelphia County, Pennsylvania, known as Franklin Square ("**Premises**") and the Premises is under the jurisdiction of the Fairmount Park Commission. The Premises is described on the plan set forth in **Exhibit A** of the Sublease.

B. Historic Philadelphia, Inc. ("**Historic Philadelphia**") is an independent nonprofit corporation that works to enhance the tourist experience in the historic district in Philadelphia.

C. PAID desires to execute this Lease with the City, and to execute the form of sublease set forth at **Attachment 1** ("**Sublease**") with Historic Philadelphia as subtenant, to facilitate Historic Philadelphia's management and operation of the attractions at the Premises.

D. On _____, 2006, the Fairmount Park Commission adopted a resolution authorizing the President of the Fairmount Park Commission and the Executive Director of Fairmount Park to execute this Lease and approving the Sublease.

E. On _____, 2007, PAID adopted a resolution approving the execution and delivery of this Lease and the Sublease. A copy of the PAID resolution is attached as **Exhibit E** to the Sublease.

G. On _____, 2007, the City Council of the City enacted an ordinance (Bill number _____) authorizing the execution of this Lease, approving the Sublease. A copy of Bill number _____ is attached as **Exhibit F** to the Sublease.

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

DEFINITIONS

Except as otherwise defined in this Lease, all capitalized words and phrases used in this Lease have the meanings given them in the Sublease. For purposes of this Lease, the capitalized words and phrases below have the meanings described below:

"**Effective Date**" has the meaning given it in the Preamble to this Lease.

“**Event of Default**” has the meaning given it in Section 10.1.

“**Historic Philadelphia**” has the meaning given it in **Background Paragraph B**.

“**Landlord**” has the meaning given it in the Preamble and includes Landlord’s successors-in-interest.

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

“**Master Lease Commencement Date**” has the meaning given it in **Section 2.1.2**.

“**Master Lease Ending Date**” has the meaning given it in **Section 2.1.1**.

“**Master Lease Term**” has the meaning given it in **Section 2.1.1**.

“**PAID**” has the meaning given it in the Preamble to this Lease.

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

“**Sublease**” has the meaning given it in **Background Paragraph C**.

“**Subtenant**” means Historic Philadelphia.

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

ARTICLE 1 **DEMISE OF PREMISES**

1.1 Demise. Beginning on the Master Lease Commencement Date, by this Lease, Landlord leases to Tenant and Tenant hires from Landlord, the Premises for the Master Lease Term and subject to all of the provisions set forth in this Lease.

1.2 Condition of Premises. On the Master Lease Commencement Date, Landlord shall deliver possession of the Premises to Tenant, and Tenant agrees to accept possession of the Premises, in the condition and subject to the restrictions described in **Article 1** of the Sublease.

1.3 No Representation or Warranty By Landlord. Without in any way limiting Section 1.2 above, Landlord makes no representation or warranty regarding compliance by the Premises with any Applicable Laws. Further, Landlord makes no representation or warranty regarding the suitability of the Premises for the Subtenant’s Primary Use or Subtenant’s Permitted Uses.

1.4 Tenant Does Not Rely on Landlord. Tenant's lease of the Premises is made without reliance on any information that Tenant may have obtained from any Landlord Party. Tenant acknowledges that it has performed, or as of the Master Lease Commencement Date will have had the opportunity to perform, all inspections of the Premises as Tenant has desired and that Tenant has entered into this Lease solely on the basis of Tenant's own inspections.

1.5 Tenant Accepts Premises "AS IS". Tenant accepts the Premises, including all Improvements in and on the Premises, if any, without any representation or warranty from Landlord or City, and in their "AS IS" condition and state of repair as of the Initial Term Commencement Date, including without limitation those conditions listed in Section 1.2 above.

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

1.7 No Waste. Despite any other provision of this Lease, at all times during the Term the Landlord is owner of fee simple title to the Premises. Tenant shall not cause or knowingly permit any waste or material damage, deterioration, or injury to the Premises or the Improvements. Subtenant's development of the Premises as contemplated by the Sublease does not constitute waste, damage, deterioration, or injury to the Premises.

1.8 NO OBLIGATION ON CITY TO APPROPRIATE OR SPEND MONEY.
DESPITE ANY OTHER PROVISION OF THIS LEASE, THIS LEASE DOES NOT OBLIGATE THE LANDLORD TO APPROPRIATE OR SPEND MONEY AT ANY TIME.

1.9 Tenant's Interest Subject to Landlord's Rights. Tenant acknowledges and agrees that its interest in the Premises under this Lease is subject in all respects to Landlord's right at all times and from time to time to maintain, repair, replace, relocate, install, and to perform all other necessary, prudent and desirable work on or to the City Conduits.

ARTICLE 2 **MASTER LEASE TERM**

2.1 Master Lease Term. The term of this Lease ("**Master Lease Term**") begins on the Commencement Date under the Sublease ("**Master Lease Commencement Date**"). The Master Lease Term ends one day after the Lease Ending Date under the Sublease ("**Master Lease Ending Date**"). All of Tenant's obligations under this Lease shall continue through the date of expiration or earlier termination of the Sublease.

2.2 Automatic Termination; No Continuing Liabilities. Following the Master Lease Ending Date, this Lease will cease to be effective and Landlord and Tenant will have no further liability or obligation to each other under this Lease except for liabilities that arise before the Master Lease Ending Date and where this Lease explicitly provides that any obligations survive the Master Lease Ending Date.

ARTICLE 3
RENT

3.1 Base Rent. As base rent for the Master Lease Term, Tenant shall pay to the Landlord the sum of \$1.00.

3.2 No Additional Rent. Tenant shall not be obligated to pay any additional rent under this Lease.

ARTICLE 4
PAYMENT OF TAXES AND OTHER CHARGES

4.1 Payment of Taxes. Tenant is not obligated to pay any taxes arising under or in connection with this Lease, the Sublease, the Premises, or use of the Premises by Subtenant, or to pay for any utility service to the Premises under the Sublease.

ARTICLE 5
USES REQUIRED AND PROHIBITED; COMPLIANCE WITH APPLICABLE LAWS

5.1 Use. Contemporaneously with execution of this Lease, Tenant shall execute the Sublease with Subtenant.

5.2 Compliance with Applicable Laws. Tenant shall comply with all Applicable Laws in its use, occupation, control and enjoyment of the Premises.

5.3 Public Purpose of This Lease and the Sublease. Landlord has entered into this Lease to support the public purposes described in Background paragraph C. Tenant acknowledges and agrees that its obligation to execute the Sublease, and Subtenant's obligation to use the Premises for the purposes Programs set forth under the Sublease,

1. are a material and substantial consideration to Landlord under this Lease and induced Landlord to lease the Premises to Tenant for nominal Rent;

2. induced the City to decide, as a matter of public policy and for the public benefit, to lease the Premises to Tenant for nominal rent under this Lease, under which Tenant is obligated to enter into the Sublease and sublet the Premises to

Subtenant for nominal rent, instead of the City using the Premises for a municipal or other public use; and

3. is a material and significant benefit to the City under this Lease. Further, Tenant acknowledges and agrees that its failure to execute the Sublease, and Subtenant's failure to use the Premises for the Programs under the Sublease, would cause actual, direct, and substantial detriment to the Landlord under this Lease.

5.4 Landlord Permitted onto Premises. Tenant shall permit Landlord, its officials, employees, agents, and contractors, to enter the Premises at all reasonable times during usual business hours for the purpose of inspecting the Premises and ensuring Tenant's compliance with the provisions of this Lease and Subtenant's compliance with the provisions of the Sublease. The limitations contained in this Section 5.4 do not apply to the Landlord's exercise of its police, fire, and other municipal functions, nor in the case of an emergency posing an imminent threat to the health, safety or welfare of persons or property.

ARTICLE 6 **CITY CONDUITS**

6.1 City of Philadelphia Water Department's Requirements. Landlord is not liable in any manner whatsoever to Tenant, the Subtenant, or any Improvements for any damage to the Premises or any Improvements, caused by, arising from, or related to the operation, maintenance, repair, replacement, or relocation of the City Conduits.

ARTICLE 7 **TITLE TO IMPROVEMENTS; NO LIENS**

7.1 Title to Improvements.

7.1.1 Upon the Sublease Ending Date, unless Landlord otherwise directs Tenant in writing, Tenant shall direct Subtenant in writing to raze any Improvements, clear the Premises of debris and rubble, restore the Premises to open park space with landscaping reasonably satisfactory to Landlord, and return to Landlord possession of the Premises.

7.1.2 If Landlord does not notify Tenant to raze the Improvements and restore the Premises within sixty (60) days following the Sublease Ending Date, however, then title to the Improvements shall automatically vest in, and become the property of, the City.

7.1.3 If title to Improvements vests in Landlord under this Section 7.1, then, despite anything to the contrary in this Section 7.1, Tenant shall require Subtenant to promptly execute and acknowledge such appropriate documentation as may be

reasonably requested by Landlord to confirm the transfer of title to the Improvements to the City.

7.1.4 Tenant's obligations under this Section 7.1 survive the Master Lease Ending Date.

7.2 No Liens on Fee; Performance and Labor and Materialmen's Bonds.

7.2.1 Landlord's interest in the Premises, including but not limited to the Improvements, shall not be subjected to liens or claims of any nature by reason of Tenant's acts under this Lease, or any Alterations, Maintenance, Repair or other work by or on behalf of Subtenant under the Sublease, or by reason of any other act or omission of Tenant or Subtenant (or of any person claiming by, through or under Tenant or Subtenant) including, but not limited to, mechanics' and materialmen's liens.

7.2.2 All persons dealing with Tenant are placed on notice by this Lease that they may not look to Landlord or to Landlord's credit or assets (including Landlord's estates in the Premises and the Improvements) for payment or satisfaction of any obligations incurred in connection with the construction, alteration, repair, restoration, replacement or reconstruction by or on behalf of Tenant or Subtenant (or any person claiming by, through or under Tenant or Subtenant). Tenant has no power, right or authority to subject Landlord's estate in the Premises and the Improvements to any mechanic's or materialman's lien or claim of lien whatsoever.

7.3 Effect of Landlord's Approval.

7.3.1. Review, approval or acceptance by Landlord of any documents submitted to Landlord by Tenant under this Lease or by Subtenant under the Sublease, including but not limited to Subtenant's design plans for any Improvement, Alteration or other work made or done by or for Subtenant, is not a representation, warranty or guaranty by the Landlord as to the substance or quality of the documents, Improvement, Alteration, or other work or matter reviewed, approved, or accepted. At all times, Tenant, Subtenant, their officers, employees, agents, contractors and subcontractors, must use their own independent judgment as to the accuracy and quality of all such documents, work and other matters.

7.3.2 Review, approval or acceptance by the Landlord of documents submitted to the Landlord by Tenant under this Lease or by Subtenant under the Sublease, including but not limited to Subtenant's design plans for any Improvement, Alteration or other work made or done by or for Subtenant, is not approval otherwise required under Applicable Laws by any and all City of Philadelphia departments, boards or commissions or by any other federal, state, or local governmental authority having jurisdiction.

7.5 Maintenance of Premises. Throughout the Master Lease Term, Landlord is not obligated to perform or pay for any cost or expense for any Alterations or any other modifications whatsoever to the Premises or Improvements.

ARTICLE 8
MAINTENANCE, REPAIRS, AND REPLACEMENTS

8.1 Landlord Not Obligated to Maintain or Repair the Premises. Without limiting Section 1.8, throughout the Master Lease Term,

8.1.1 Landlord is not obligated to maintain or repair, and is not obligated to pay to maintain or repair, all or any part of the Premises or the Improvements, including but not limited to performing or paying for any Maintenance or Repair required under the Sublease;

8.1.2 Landlord is not required to furnish any services or facilities to Tenant, or to all or any part of the Premises or the Improvements; and

8.1.3 Tenant expressly waives any and all rights it may have under Applicable Laws to maintain or repair all or any part of the Premises or the Improvements at the expense of Landlord.

8.2 Security. Landlord is not obligated to provide any security for the Premises or the Improvements.

ARTICLE 9
ENVIRONMENTAL MATTERS

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

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

9.1.2 any claim made or threatened by any person against Landlord, Tenant, Subtenant, or the Premises, arising out of or resulting from any Contamination; and

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

9.2. No Tenant Liability For Contamination. Tenant is not liable to the Landlord to remediate Contamination existing on the Premises prior to the Effective Date of this Lease.

ARTICLE 10 **DEFAULT; SURRENDER OF THE PREMISES**

10.1 Events of Default. The occurrence of any of the following is a breach of the Lease and default by Tenant under the Lease (each an “**Event of Default**”):

10.1.1 Tenant fails to perform or observe any term, condition, covenant, requirement or other obligation applicable to Tenant under this Lease after thirty (30) days notice from Landlord;

10.1.2 The subjection of any right or interest of Tenant under this Lease to attachment, execution, or other levy, or to seizure under legal process, if not released or appropriately bonded within ninety (90) days after receipt of written notice by Landlord;

10.1.3 The appointment of a receiver to take possession of the Premises and or any of the Improvements or of Tenant’s interest in the Premises or of Tenant’s operations for any reason if not discharged within ninety (90) days of such appointment (without the requirement of notice from Landlord of the default), including but not limited to, assignment for the benefit of creditors or voluntary or involuntary bankruptcy proceedings, but not including receivership instituted by Landlord, the event of default being not the appointment of a receiver at Landlord’s instance but the event justifying the receivership, if any; or

10.1.4 An assignment by Tenant for the benefit of its creditors or the filing of a voluntary or involuntary petition by or against Tenant under any law for the purpose of adjudicating Tenant as bankrupt; or for extending time for payment, adjustment or satisfaction of Tenant’s liabilities to creditors generally; or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency; unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed or terminated within ninety (90) days after the assignment, filing, or other initial event (without the requirement of notice from Landlord of the default).

10.2 Notice to Certain Persons. Landlord shall, before pursuing any remedy, give notice of any Event of Default to Tenant, unless notice is not required as provided in Section 10.1 above. Each notice of an Event of Default must specify the Event of Default.

10.3 Landlord's Remedies. If any Event of Default by Tenant continues uncured, following notice of default as required by this Lease, for the period applicable to the default under the applicable provision of this Lease, Landlord may exercise the following remedies, in addition to all other rights and remedies available to Landlord at law or in equity. Landlord may exercise its remedies under this Lease and those available at law and in equity either individually, cumulatively, successively, or in any combination:

10.3.1 Termination. Subject to the Lease Recognition Agreement, Landlord may at its election terminate this Lease by giving Tenant written notice of termination. On the giving of the notice, all of Tenant's rights in the Premises and in the Improvements shall terminate. Subject to the Lease Recognition Agreement, promptly after notice of termination, Tenant shall surrender and vacate the Premises and the Improvements in broom-clean condition, and Landlord may reenter and take possession of the Premises and the Improvements and eject all parties in possession, or eject some and not others or eject none. Termination of this Lease by Landlord shall not relieve Tenant from any claim for damages previously accrued or then accruing against Tenant up to the date of termination.

10.3.2 Reentry Without Termination. Subject to the Lease Recognition Agreement, Landlord may at its election, whether or not Tenant abandons the Premises, continue this Lease in effect until such time as Landlord elects to terminate Tenant's right to possession, reenter the Premises, and, without terminating this Lease, at any time and from time to time, subject to the rights of Subtenant under the Lease Recognition Agreement, re-let the Premises and Improvements or any part or parts of them for the account and in the name of Tenant or otherwise. Any re-letting may be for the remainder of the Master Lease Term or for a longer or shorter period. No act by or on behalf of Landlord under this provision shall constitute a termination of this Lease unless Landlord gives Tenant notice of termination.

10.4 Surrender upon Expiration or Termination. Subject to Section 7.1, on the Master Lease Ending Date, Tenant shall quit and surrender the Premises to Landlord without delay, and in good order, condition and repair, except for ordinary wear and tear and damage and destruction or condemnation if this Lease is terminated because of termination of the Sublease under either Article 12 (Damage or Destruction) or Article 13 (Eminent Domain) of the Sublease. Tenant shall surrender the Premises at its sole cost and expense and without any claim against Landlord.

10.5 No Merger of Estates. Subject to the Lease Recognition Agreement, Tenant's surrender of the Premises and the Improvements will not cause a merger of the Landlord's estate in the Premises and Tenant's estate, or of Landlord's estate and Subtenant's estate in the Premises, unless Landlord expressly agrees in writing.

10.6 Tenant's Obligations Continue. Tenant's obligations under this **Article 10** shall survive the expiration or earlier termination of this Lease.

ARTICLE 11

SUB-LEASES, MORTGAGES, ASSIGNMENTS, AND TRANSFERS PROHIBITED

11.1 Tenant Shall Not Sublease, Mortgage, Assign or Transfer. Tenant acknowledges that this Lease has been entered into by Landlord relying on Tenant's commitment to execute the Sublease with the Subtenant. Therefore, except for Tenant's execution of the Sublease with Subtenant, Tenant shall not sublease, mortgage, assign, or otherwise transfer or encumber this Lease or Tenant's interest in this Lease and the Premises in any manner. Any violation of this Section by Tenant shall be deemed a nullity and shall, at the sole option of Landlord, be deemed an Event of Default without opportunity to cure, entitling Landlord to exercise any or all of its remedies at law, in equity, and as provided in this Lease.

ARTICLE 12

DISCRIMINATION PROHIBITED; NO DEBT TO CITY

12.1 Discrimination Prohibited. In Tenant's use of the Premises and exercise of its rights under this Lease, Tenant shall not discriminate or permit discrimination against any person on the basis of age, race, color, religion, national origin, ancestry, physical disability, sex, sexual orientation, or gender identity.

12.2 Non-Indebtedness. By executing this Lease, Tenant represents, warrants, and covenants that Tenant and Tenant's subsidiaries, and affiliates, if any, are not currently indebted to the City for or on account of, and will not at any time during the Master Lease Term be indebted to the City for or on account of, any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of The School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan reasonably satisfactory to the City has been established.

12.3 Prohibited Gifts, Gratuities, and Favors.

12.3.1 Tenant must not offer or give, directly or indirectly, anything of value to any official or employee in the Executive or Administrative branch of the City, including any gift, gratuity, favor, entertainment or loan, the receipt of which would violate Executive Order No. 002-04 issued by the Mayor of Philadelphia on August 12, 2004, so long as such Executive Order remains in force and effect.

12.3.2 Any person who offers or gives anything of value to any City official or employee the receipt of which would violate Executive Order No. 002-04 may be subject to sanctions with respect to future City contracts to the extent expressly stated in said Executive Order.

ARTICLE 13
NOTICES

13.1 Any notice, approval, request, demand or other communication required or desired to be given pursuant to this Lease must be in writing and sent or given addressed as set forth below in one or more of the following manners: (1) personal service with receipt obtained (including by means of professional messenger service); or (2) United States mail, postage prepaid, certified or registered, with return receipt requested; or (3) next-business day delivery using a nationally recognized express courier service.

If to Landlord: Executive Director
Fairmount Park
One Benjamin Franklin Parkway – 10th Floor
1515 Arch Street
Philadelphia, PA 19102

and to: Commissioner
City of Philadelphia Department of Public Property
Municipal Services Building – 10th Floor
1401 JFK Boulevard
Philadelphia, PA 19102

with a copy to: City Solicitor
City of Philadelphia Law Department
One Benjamin Franklin Parkway – 17th Floor
1515 Arch Street
Philadelphia, PA 19102

If to Tenant: President
Philadelphia Authority for Industrial Development
2600 Centre Square West
1500 Market Street
Philadelphia, PA 19102

with a copy to: Ellen S. Brown, Esquire
Philadelphia Authority for Industrial Development
2600 Centre Square West
1500 Market Street
Philadelphia, PA 19102

13.2 Date of Notice Delivery. For purposes of this Lease, notice given in the manner provided in **Section 13.1** above shall be deemed received on the last date of delivery shown on the receipts obtained, or upon refusal of delivery, of all the notice letters.

13.3 Change of Notice Address. Either Landlord or Tenant may change its respective address or the address(es) to which the other party shall provide copies of notice, by giving written notice to the other in accordance with the provisions of this Article. Notices may be given by legal counsel for a party, but only if given in the manner required in this Article.

ARTICLE 14 **ESTOPPEL CERTIFICATES**

14.1 Estoppel Certificates. Each party agrees that, within thirty (30) days following its receipt of a written request from the other party (but not more than twice in any one-year period), it will execute and deliver an Estoppel Certificate to the requesting party and/or its designee.

14.2 Landlord Certificate Regarding Sublease. Tenant agrees that Landlord may give an Estoppel Certificate under the Sublease on behalf of Tenant (in Tenant's position of "Landlord" under the Sublease). Tenant is not liable for any inaccuracies in any Estoppel Certificate given by Landlord on Tenant's behalf.

14.3 Mortgages; Non-Disturbance and Attornment Agreements. Landlord represents, warrants and covenants to Tenant that, as of the Effective Date of this Lease, neither the Premises nor any interest in the Premises is subject to the terms, conditions or lien of any mortgage. Throughout the Master Lease Term, this Lease is superior to the lien of any mortgage that the City desires to record against the Premises, the Improvements, or any portion of the Premises or Improvements, or interest in the Premises or Improvements following the Effective Date.

ARTICLE 15 **NOTICE FROM SUBTENANT; APPROVALS BY LANDLORD; ENFORCEMENT BY LANDLORD; MANNER OF APPROVALS**

15.1 Notice from Subtenant. Wherever the Sublease requires the approval of both Landlord and Tenant (in Tenant's position of "Landlord" under the Sublease), Tenant acknowledges and agrees that Subtenant may submit the matter requiring the approval simultaneously to Landlord and Tenant and, upon Subtenant's submission of the matter to Landlord, Tenant will be relieved of all responsibility to submit the matter to the Landlord.

15.2 Landlord's Approvals of Subtenant Requests. Except where the provisions of this Lease or the Sublease explicitly require Subtenant to obtain separate approvals of both Landlord and Tenant (in Tenant's position of "Landlord" under the Sublease), any approval granted by the Landlord to Subtenant under this Lease or the Sublease (in each case, in the manner required for such approval) shall be deemed

approval by Tenant as well. Tenant is not liable in any way for any approval or consent duly granted by the Landlord to Subtenant under this Lease or the Sublease.

15.3 Enforcement by Landlord. Tenant acknowledges and agrees that all of the City's rights and remedies under the Sublease, and all of Tenant's rights and remedies under the Sublease (in Tenant's position of "Landlord" under the Sublease) may be exercised and or enforced directly by Landlord. In addition, and without limiting the preceding sentence, Tenant acknowledges and agrees that Landlord is a third party beneficiary of all provisions in the Sublease that require Subtenant to obtain the approval or consent of the City or to provide information or documents to the City.

15.4 Person Granting and Manner of Approvals. Subject to the next sentence, wherever the review, consent or approval of, or determination by, the City as owner of the Premises is required under this Lease (except for approvals required under Applicable Laws), such review, consent or approval or determination will not be valid or binding against the City unless obtained from or made by the Executive Director and in the manner required by this Lease. Wherever the review, consent or approval of, or determination by, a specified City official, commission, department, or council is required under this Lease, then the review, consent or approval or determination will not be valid or binding against the City unless obtained from or made by the specified official, commission, department, or council in the manner specified.

15.5 Effect of Landlord's Approval. Landlord review, approval, consent, determination, or acceptance under this Lease, or submitted to Landlord by Subtenant in accordance with the Sublease, of any document, work, matter, or thing, is not (a) a representation, warranty or guaranty by Landlord as to the substance, accuracy, or quality of such document, work, matter, or thing or (b) approval otherwise required under Applicable Law by any and all City of Philadelphia departments, boards or commissions or by any other federal, state, or local governmental authorities having jurisdiction. At all times, Tenant, its officials, officers, employees, agents, contractors and subcontractors, must each use their own independent judgment as to the substance, accuracy and quality of all such documents, work, matter, and things.

15.5 Landlord Accepts Requirement of Performance by Subtenant. Provided Tenant has required Subenant to perform any obligations set forth under this Lease, Landlord agrees to look solely to Subenant for the performance of those obligations and agrees further that Tenant's liability under this Lease shall be limited to Tenant's interest in this Lease.

ARTICLE 16 **NO MERGER**

16.1 No Merger. The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation of this Lease, will not merge the leasehold estate and Landlord's title

in and to the Premises. Subject to the Lease Recognition Agreement, at any time after such surrender or cancellation, however, Landlord may elect to terminate this Lease.

ARTICLE 17
QUIET ENJOYMENT; LANDLORD'S RIGHT TO INSPECT

17.1 Quiet Enjoyment. So long as no Event of Default has occurred under the provisions of this Lease and has continued beyond all applicable cure periods set forth in this Lease, Tenant may peaceably and quietly hold and enjoy the Premises for the Term without hindrance or interruption by Landlord or anyone lawfully claiming through Landlord. Tenant's peaceable and quiet enjoyment of the Premises under this **Section 17.1** is subject to the provisions of this Lease, including Landlord's limited right to enter and inspect the Premises provided in **Section 17.2** below.

17.2. Landlord's Right to Enter Premises. Notwithstanding the provisions of **Section 17.1**, Landlord may enter the Improvements only for the purpose of (a) performing the City's municipal duties, such as (by way of example only) delivering police and fire services, inspections by licensing departments and other similar services, or (b) exercising Landlord's remedies under this Lease.

ARTICLE 18
GENERAL PROVISIONS

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

18.2 Counterparts. Any copy of this Lease executed with original signatures is an original of this Lease for all purposes. This Lease may be executed in one or more counterparts, each of which is an original, and all of which together constitute a single instrument.

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

18.4 Severability. If any one or more of the provisions contained in this Lease is for any reason held to be invalid, illegal or unenforceable in any respect, such

invalidity, illegality or unenforceability shall not affect any other provision of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provision had not been contained in this Lease. If the invalid, illegal, or unenforceable provision (as determined by a final, unappealable order of a court of competent jurisdiction) is Section 1.8, Section 5.1.1, Section 5.1.3, or Section 5.5, however, then either Landlord or Tenant may terminate this Lease upon one hundred eighty (180) days written notice to the other.

18.5 Interpretation.

18.5.1 This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to choice of law provisions. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against either Landlord or Tenant. When the context of this Lease requires, the neuter gender includes the masculine and feminine, and the singular includes the plural. Landlord and Tenant agree that they have each participated equally in the negotiation and writing of this Lease and that the rule of construing or interpreting any ambiguities in an agreement against the drafter of the agreement does not apply in connection with this Lease.

18.5.2 Unless explicitly provided otherwise, all references in this Lease to sections, exhibits, and attachments refer to sections, exhibits and attachments of and to this Lease. Unless explicitly provided otherwise, all references in this Lease to the Premises means all or part of the Premises, and reference to the Improvements means all or part of the Improvements.

18.5.3 Unless explicitly provided otherwise, all uses in this Lease of the words “include,” “includes,” or “including” means “including but not limited to” or other similar phrase.

18.6 Successors and Assigns. Without limiting or modifying the restrictions set forth in Article 11 above regarding subleases, mortgages, and transfers, this Lease is binding upon and inures to the benefit of the parties to this Lease and their respective permitted successors and assigns (to the extent this Lease is assignable).

18.7 Integration Clause. This Lease and the Exhibits attached to this Lease are the entire agreement between Landlord and Tenant, and there are no agreements or representations between Landlord and Tenant except as expressed in this Lease. All prior negotiations and agreements between Landlord and Tenant with respect to the subject matter of this Lease are superseded by this Lease.

18.8 Strict Enforcement of the Lease. Either party may enforce all provisions of this Lease strictly, regardless of (1) any law, usage, or custom to the contrary, (2) any conduct of the enforcing party in refraining from enforcing any provisions of this Lease at any time, (3) any conduct of the enforcing party in refraining from exercising its rights and remedies under this Lease, and (4) any course of conduct between Landlord and Tenant. Any conduct or custom between Landlord and Tenant does not create a custom

in any way or manner contrary to any specific provision of this Lease, or as having in any way or manner modified the same.

18.9 Amendment and Modification. This Lease can only be amended, modified or supplemented by a written agreement approved in advance by Philadelphia City Council, by ordinance that becomes law, and signed by both Landlord and Tenant. If City Council does approve an ordinance that becomes law and that approves any amendment to this Lease, then Landlord shall execute the approved amendment with Tenant. This Lease cannot be amended, modified, or supplemented by any oral representations, whenever made, by any official or employee of Landlord, or by any course of conduct between Landlord and Tenant.

18.10 No Implied Consent. Landlord's failure to respond orally or in writing to any request or offer from Tenant to modify or waive any of Tenant's obligations under this Lease does not constitute Landlord's consent to Tenant's request or offer. Similarly, Tenant's failure to respond orally or in writing to any request or offer from Landlord to modify or waive any of Landlord's obligations under this Lease does not constitute Tenant's consent to Landlord's request or offer. Each party shall comply with its obligations under this Lease unless and until a request or offer to modify or waive any provision of this Lease is explicitly accepted in writing by the party bound to perform. In addition, any request by Tenant for a waiver or modification of Tenant's obligations under this Lease will not be granted or valid unless also approved by the Commission by resolution.

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

18.12 Commissions. Landlord and Tenant each represent and warrant to the other that they have employed no broker, finder or other person in connection with the transactions contemplated under this Lease that might result in the other party being held liable for all or any portion of a commission under this Lease. Landlord and Tenant each agree to indemnify and hold the other free and harmless from and against all claims and liability arising by reason of the incorrectness of the representations and warranties made by such party in this Section, including, without limitation, reasonable attorneys' fees and litigation costs.

18.13 Survival. Notwithstanding anything to the contrary contained in this Lease, only the provisions (including, without limitation, covenants, agreements, representations, warranties, obligations, and liabilities described in any provision) of this Lease which expressly survive the expiration or earlier termination of this Lease (whether or not such provision expressly provides as such) shall survive such expiration or earlier termination of this Lease and continue to be binding upon the applicable party.

18.14 Memorandum of Sublease. The parties shall execute a memorandum of this Lease in the form attached as **Attachment 2**. Tenant may, at its sole cost and expense, record the memorandum of this Lease against the Premises. Any recording, transfer, documentary, stamp or other tax imposed upon the execution or recording of any memorandum of this Lease shall be paid by Tenant. Upon the expiration or earlier termination of this Lease, Landlord and Tenant promptly shall execute a termination of any such memorandum of this Lease in proper form for recording, and said obligation shall survive the expiration or termination of this Lease.

18.15 No Personal Liability of Landlord. Neither Landlord nor any official, officer, or employee of Landlord shall have any liability, personal or otherwise, with respect to this Lease or the transaction contemplated hereby, nor shall the property of any such person or entity be subject to attachment, levy, execution or other judicial process except that any liability of Landlord shall be limited to its interest in the Premises and the lien of any judgment shall be restricted thereto.

18.16 No Personal Liability of Tenant. No officer, director, trustee or stockholder of Tenant shall have any liability, personal or otherwise, with respect to this Lease or the transaction contemplated hereby, nor shall the property of any such person be subject to attachment, levy, execution or other judicial process.

18.17 Background. The Background paragraphs to this lease are incorporated into and part of this Lease.

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

IN WITNESS OF THE PROVISIONS SET FORTH ABOVE, Landlord and Tenant have caused their duly authorized officials and representatives to execute this Lease as of the date first written above.

LANDLORD:

**CITY OF PHILADELPHIA
FAIRMOUNT PARK COMMISSION**

Robert N. C. Nix, III, President

Mark A. Focht, Executive Director, Fairmount Park

TENANT:

CORPORATE SEAL:

**PHILADELPHIA AUTHORITY FOR
INDUSTRIAL DEVELOPMENT**

BY: _____
Chairman/Vice Chairman

BY: _____
Secretary/Treasurer

Attachment 1 to Master Lease

Sublease

SUBLEASE

This Sublease (“**Sublease**”) is made as of the _____ day of _____ 2007 (“**Effective Date**”), by and between the **Philadelphia Authority for Industrial Development** (“**PAID**” or “**Landlord**”) and **Historic Philadelphia, Inc.** (doing business as “Once Upon a Nation”) (“**Subtenant**”), a Pennsylvania non-profit corporation, with an address and principal place of business at 500 Arch Street, Philadelphia, Pennsylvania 19106.

BACKGROUND

- A.** Franklin Square (“**Premises**”) in the City of Philadelphia is under the jurisdiction of the Fairmount Park Commission. The Premises is described on the plan set forth in **Exhibit A**, which is attached to and part of this Sublease.
- B.** City leased the Premises to Landlord under a Lease Agreement (“**Master Lease**”) of the same date as this Sublease.
- C.** Subtenant represents and warrants that it was organized for the purpose of operating the “**Programs**” described in **Exhibit B**, which is attached to and part of this Sublease.
- D.** Under a License Agreement for Construction dated February 27, 2006, City gave Subtenant a license to perform “**Renovations**” to the Premises, as more fully set forth in the License Agreement.
- E.** Subtenant desires to sublease the Premises from Landlord, under and subject to the Master Lease, and Landlord desires to sublease the Premises to Subtenant, upon the provisions set forth in this Sublease.

THEREFORE, Landlord and Subtenant, intending to be legally bound, agree as follows:

DEFINITIONS

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

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

“**Alcoholic Beverages**” means any liquor or malt or brewed beverages as defined in the Pennsylvania Liquor Code, currently codified at 47 P.S. §§ 1-101 et. seq., as amended or recodified from time to time.

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

“**Applicable Law**” and “**Applicable Laws**” mean all present and future federal, state, and municipal laws, ordinances, codes, notices, orders, rules, regulations, and requirements relating to the Premises, this Sublease, Subtenant, the Programs, Contractors, and all subtenants. Applicable Law and Applicable Laws include but are not limited to: (1) that certain federal legislation commonly known as the “Americans With Disabilities Act of 1990,” PL Sections 101-336, codified generally at 42 U.S.C. Sections 12101 *et. seq.*, (2) all laws that govern or regulate the use, presence, treatment, and disposal of hazardous substances and environmental contamination, (3) the Philadelphia Home Rule Charter and the Philadelphia Code, (4) all laws and regulations related to fire suppression mechanisms and plans, and (5) the regulations of the Fairmount Park Commission.

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

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

“**Building**” and “**Buildings**” have the meaning given them and are identified in Exhibit A.

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

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

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

“**Commission**” means the Fairmount Park Commission and any successor commission, board, or agency.

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

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

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

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

“**Effective Date**” is defined in the preamble paragraph of this Sublease.

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

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

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

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

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

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

“**Landlord**” means the Philadelphia Authority for Industrial Development, its officers, directors, and employees.

“**Landscape Plan**” has the meaning given it in Section 7.4.4.

“**License Agreement**” has the meaning given it in Background paragraph D.

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

“**Maintenance Account**” has the meaning given it in Section 7.8.1.

“**Master Landlord**” means the City.

“**Master Lease**” has the meaning given it in Background paragraph B.

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

“**Miniature Golf Course**” means that certain miniature golf course constructed by Subtenant on the Premises in accordance with the License Agreement.

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

“**Off Season**” means each time period during the Term excluded from the Operating Season.

“**Operating Season**” has the meaning given it in Section 2.1.1.

“**PAID**” has the meaning given it in the preamble paragraph to this Sublease.

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

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

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

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

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

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

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

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

“**Sublease**” has the meaning given it in the preamble, including all amendments to this Sublease.

“**Subtenant**” means the Subtenant defined in the introductory paragraph of this Sublease and Subtenant’s officers, directors, employees, agents, representatives, successors, and assigns.

“**Subtenant Trademarks**” has the meaning given it in Section 20.5.1.

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

“**Trade Fixtures**” means Subtenant’s equipment placed on the Premises to further Subtenant’s activities and Programs on the Premises. Trade Fixtures do not include the Improvements.

“**Trademarks**” has the meaning given it in Section 20.1.1.

Exhibit A – Map of Premises

Exhibit B – Subtenant’s Programs

Exhibit C – Fairmount Park Landscape Maintenance Standards and Procedures

Exhibit D – Subtenant’s Corporate Documents

ARTICLE I
PREMISES; CONDITION

1.1 Sublease. Commencing as of the Commencement Date, Landlord leases to Subtenant and Subtenant leases from Landlord, the Premises, for the Term, upon and subject to all the provisions of this Sublease.

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

1.3 Subtenant Accepts Premises "AS IS". Subtenant accepts the Premises, including all improvements on the Premises, without any representation or warranty from Landlord or the City, and in their "AS IS" condition, including without limitation:

- 1.3.1** the zoning applicable to the Premises,
- 1.3.2** all surface and subsurface conditions of the Premises,
- 1.3.3** the present uses and non-uses of the Premises, and
- 1.3.4** all latent and patent defects and hazards.

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

- 1.4.1.** title to the Premises;
- 1.4.2.** encumbrances, agreements, and restrictions affecting the Premises or use of the Premises;
- 1.4.3.** conditions in, on, or about the Premises,
- 1.4.4.** the nature or usability of the Premises, or the use or uses to which the Premises or any part of the Premises may be put, including but not limited to the suitability of the Premises for Subtenant's intended use under this Sublease.

1.5 Subtenant Does Not Rely on Landlord or City. Subtenant is leasing the Premises without reliance on any information concerning the condition of the Premises that Subtenant may have obtained from Landlord or the City. Subtenant acknowledges that it has performed all inspections of the Premises as it has desired and has agreed to this Sublease solely on the basis of Subtenant's own inspections.

1.6 No Representation or Warranty By Landlord. Without in any way limiting Section 1.3 above, Landlord makes no representation or warranty regarding compliance

by the Premises with any Applicable Laws, including but not limited to compliance with laws regulating hazardous substances and that law commonly known as the Americans With Disabilities Act of 1990, P.L. Sections 101-336, codified generally at 42 U.S.C. §§ 12101 *et. seq.*, and all rules, regulations and guidelines promulgated pursuant to that law, as any or all of the foregoing may be amended from time to time.

1.7 Jurisdiction of Commission and Other City Boards and Commissions.

Without limiting the application of Applicable Laws to the Premises, Subtenant acknowledges that at all times during the Term the Premises will remain subject to the jurisdiction of the Commission, the Philadelphia Historical Commission, and the Philadelphia Art Commission.

1.8 No Financial Obligation on Landlord or City. **Subtenant acknowledges and agrees that this Sublease does not impose any obligation on the Landlord or City to appropriate or expend funds at any time during the Term.**

1.9 Other Uses.

1.9.1. Landlord will require City, during the Term, to refer applicants who wish to use portions of the Premises for specific events or as a group to seek approval for such use from Subtenant. Landlord will also require City not to enter into any agreements that encumber or restrict Subtenant's use of the Premises under this Sublease. In case of a violation of this section 1.9.1, Subtenant's sole remedy shall be to seek an injunction or other equitable relief. This section 1.9.1 shall not apply to normal, individual use of the Premises as a public park, such as for exercise, strolling, children's play, picnics, and similar recreational activities.

1.9.2. Notwithstanding section 1.9.1 above, upon reasonable notice Subtenant shall permit the City of Philadelphia Police and Fire Departments to use the Premises to hold memorial services for police and fire officials and officers. In addition, Subtenant shall permit persons and organizations to use the Premises for public demonstrations or as staging areas for demonstrations and marches in accordance with Subtenant's policies, including but not limited to Subtenant's requirements regarding issuance of permits. In no event, however, shall Subtenant be obligated to permit the City of Philadelphia Police or Fire Departments, or persons or organizations holding demonstrations or staging demonstrations or marches, to use the Designated Improvements or Trade Fixtures. Landlord shall require the City to provide Subtenant with reasonable prior notice of any proposed services to be held by the City of Philadelphia Police or Fire Departments, and, where circumstances reasonably permit, of any proposal for the Philadelphia Police or other law enforcement officials to use the Premises in connection with demonstrations or staging of demonstrations or marches. In case of a violation of this section 1.9.2 by Landlord or City, Subtenant's sole remedy shall be to seek an injunction or other equitable relief.

1.9.3. Without limiting Subtenant's indemnification obligations under Section 10.2 and 10.3, Subtenant shall indemnify, defend, and hold harmless the City

from and against all claims, suits, actions, liabilities, damages, losses, costs, and expenses (including attorneys fees and experts fees), arising under or relating to Subtenant's consideration, issuance, or denial, of permits to persons or groups that want to use the Premises for private use or for demonstrations or staging of demonstrations or marches.

ARTICLE 2
USES REQUIRED, PERMITTED, AND PROHIBITED

2.1 Uses Required: General. Subtenant must at its sole cost and expense occupy and use the Premises for the following purposes only:

2.1.1. to operate Subtenant's Programs during the Operating Season. For purposes of this Sublease, "**Operating Season**" means March 1 through the following October 31 each year during the Term. Subtenant may begin or extend the Operating Season any year during the Term beyond the dates specified in the preceding sentence if: (a) Subtenant provides written notice to the City at least 45 days before the start of the proposed extension period explaining the proposed extension, and (2) the proposed extension is approved in writing by the Executive Director, whose approval shall not be unreasonably withheld. For the first Operating Season under this Sublease, Subtenant may commence its Programs after the start of the Operating Season but must cease operations at the end of the Operating Season, unless Subtenant obtains approval to extend the Operating Season as provided above in this section 2.1.1;

2.1.2. to perform and make Alterations of and to the Premises in strict accordance with Article 6 below;

2.1.3. to Maintain and Repair the Premises in strict accordance with Article 7 below; and

2.1.4. to issue licenses or permits for third parties to use some or all of the Premises from time to time, subject to section 2.2 below and the other provisions of this Sublease; and

2.1.5. for bona fide fundraising events to support maintenance, repair, and replacement of Improvements on the Premises and operation of Subtenant's Programs.

2.2 Use Required: Public Use of the Premises. At all times during the Term, Subtenant must permit members of the public to traverse public footways through the Premises and to use those portions of the Premises other than the Designated Improvements and Trade Fixtures. Subtenant may, however, secure from public use those Buildings on the Premises that Subtenant uses to store equipment and supplies, and Subtenant may prohibit members of the public from using portions of the Premises that Subtenant otherwise charges a fee for persons to use or that Subtenant reasonably requires to secure equipment and Improvements. Except for normal public use of the

Premises as a public park by individuals, subject to Section 1.9.1 above, Subtenant may require groups, commercial users, and other third parties to obtain a permit or license from Subtenant before entering the Premises.

2.3 Subtenant Responsible for Safe Use of Premises. Except for obligations expressly assumed by City under the Lease, Subtenant at its sole cost and expense must provide or contract for all services and equipment necessary and desirable to safely occupy, use, repair, maintain, and operate the Premises during each Operating Season, to operate Subtenant's Programs during each Operating Season, and to fulfill Subtenant's obligations under this Sublease. Subtenant assumes sole and complete responsibility and liability for using the Premises in unsafe condition.

2.4 Fees. Subtenant may impose reasonable charges and fees for persons to use certain portions of the Premises operated in connection with Subtenant's Programs (including but not limited to play on the Miniature Golf Course), or to otherwise participate in Subtenant's Programs. Subtenant may impose reasonable charges for issuing permits or licenses to third parties seeking to use portions of the Premises other than for normal individual use of the Premises as a public park. All charges and fees received by Subtenant from the Programs at the Premises and from permit and license fees must be used or held by Subtenant for maintenance, repair, or replacement of the Premises or for operation of Subtenant's Programs at the Premises. Without limiting Subtenant's indemnification obligations under Section 10.2 and 10.3, Subtenant shall indemnify, defend, and hold harmless the City from and against all claims, suits, actions, liabilities, damages, losses, costs, and expenses (including attorneys fees and experts fees), arising under or relating to Subtenant's imposition, charge, or assessment of charges, fees, or other costs, in connection with Subtenant's issuance of permits to use any portion of the Premises.

2.5 Food and Beverages; Alcoholic Beverages.

2.5.1. Subject to Section 2.7.2 below, during the Operating Season Subtenant may permit Food and Beverage Operations on the Premises, either directly or under a contract, provided that (1) the food service operation is licensed by the City of Philadelphia under Applicable Laws and (2) all revenue received by Subtenant from the Food and Beverage Operations (after deducting Subtenant's actual cost for food, beverages, and associated supplies, or the actual charges of Subtenant's Contractors for performing the Food and Beverage Operations) are used or held by Subtenant for Maintenance, Repair, or replacement of the Premises or for operation of Subtenant's Programs at the Premises. Subtenant may not place or permit vending machines on the Premises at any time during the Term.

2.5.2. Subtenant may permit the serving (but not the sale) of Alcoholic Beverages only for special events held on the Premises, subject to all of the following conditions precedent:

1. Subtenant or its permittee or licensee must hire a professional caterer to serve the Alcoholic Beverages, and the caterer must hold all licenses and permits required by Applicable Laws to serve Alcoholic Beverages, and the licenses and permits must be valid, current, and effective for serving Alcoholic Beverages on the Premises;

2. The caterer who will serve the Alcoholic Beverages, must obtain host liquor liability insurance in amounts acceptable to City in its reasonable discretion and that names Landlord and City as additional insureds; and

3. Subtenant must provide, or cause its Contractors who will serve the Alcoholic Beverages to provide, a certificate of insurance to the Executive Director and the City of Philadelphia Risk Manager evidencing that Subtenant, or its Contractors who will serve the Alcoholic Beverages, as the case may be, has obtained the insurance, and in the amount, required by the City.

2.5.3. Subtenant shall ensure that all Alcoholic Beverages served on the Premises are served by a caterer who satisfies the conditions precedent listed in Section 2.5.2.

2.6 Compliance With Applicable Laws. Subtenant at its sole cost and expense must comply with all Applicable Laws in its activities under this Sublease and in its Maintenance, Repair, Alteration, and operation of the Premises. Subtenant acknowledges that the condition of the Premises may not presently comply with all Applicable Laws. Subtenant further acknowledges and agrees that it is solely Subtenant's responsibility to, and Subtenant shall, at Subtenant's sole cost and expense, make Alterations and Repairs to the Premises in accordance with the terms of this Sublease to cause the Premises to comply with all Applicable Laws. Subtenant shall be solely liable for its noncompliance with any Applicable Laws, including but not limited to third party claims and governmental fines and penalties.

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

2.7.1. Subtenant must not use or permit the use of the Premises in violation of any Applicable Laws or in violation of this Sublease. Except for acts or conditions that are not the responsibility of Subtenant, or that are explicitly made the responsibility of Landlord or City under this Sublease or the Lease, Subtenant must not permit any act to be done or any condition to exist in, on, or about the Premises that may: (1) be dangerous, (2) in law constitute a public or private nuisance, or (3) make void or voidable any insurance then in force with respect to the Premises or any part of the Premises.

2.7.2. Except as explicitly permitted under Section 2.5 above regarding Alcoholic Beverages, Subtenant must not sell, distribute, serve, or permit the presence in, on, or about the Premises of Alcoholic Beverages.

2.7.3. Subtenant must not permit all or any part of the Premises to be used in any manner as might tend to impair the City's title to all or any part of the Premises. Subtenant must not permit any part of the Premises to be used in any manner as might make possible a claim or claims of adverse usage or adverse possession by the public or of implied dedication of any or all of the Premises.

2.7.4. Except as explicitly permitted under Sections 2.1.1, 2.1.5, 2.4 and 2.5 of this Sublease, Subtenant must not permit any commercial activities on the Premises.

2.7.5. Subtenant's obligations under this Section 2.7 are subject to the provisions of Section 2.9 below.

2.8 Signs.

2.8.1. Except for any signs required under Applicable Laws, Subtenant must not place, erect, post, hang, or paint any sign in, on, or about the Premises without the prior approval of the Commission and the City of Philadelphia Art Commission.

2.8.2. Subtenant must maintain prominent, clearly legible signs at or reasonably near the entrances to the Premises that identify the Premises and contain the following inscription:

Franklin Square
Fairmount Park

or such other wording, inscription in stone or concrete, logo, and letter size that the Commission approves in advance by resolution. After installing or erecting any approved signs, Subtenant must comply in all respects with the Commission's regulations and policies regarding signs.

2.9 Security.

2.9.1 At all times during each Operating Season, Subtenant must, at its sole cost and expense, take all reasonable and prudent measures to keep the Premises safe and secure against break in (of the Improvements), fire, and other hazards, and to prevent injury or damage to all persons and property in, on, and about the Premises. Subtenant shall take all reasonable and prudent measures to ensure the safety of property and persons (including but not limited to the public) in connection with Subtenant's use and occupancy of the Premises under this Lease.

2.9.2 At all times during the Term, Subtenant must, at its sole cost and expense, provide a security guard to patrol and monitor the Premises twenty-four hours a day, every day of the year. The guard shall be responsible primarily for protecting the

Improvements in the Premises and the Trade Fixtures. The guard shall promptly report to the appropriate authorities all acts on the Premises in violation of Applicable Laws or that otherwise pose a danger to persons or property in, on, or about the Premises.

2.9.3 Notwithstanding Subsection 2.9.2, Subtenant may submit alternative plans to the City for security for the Premises during the Off Season at Subtenant's sole cost and expense. Landlord shall require the City to not unreasonably withhold its approval of Subtenant's alternative plan. Landlord shall further require the City to endeavor to respond to any request by Subtenant for approval of an alternative security plan within sixty (60) days after Subtenant submits the plan to City.

2.9.4 Neither Landlord nor City (in its proprietary capacity as property owner) are obligated to provide any security for the Premises. Nothing in this Sublease, however, affects the City's responsibility to provide municipal public safety functions, such as police and fire department service. In addition, nothing in this Sublease obligates the Subtenant to perform police service and police activities in any manner. If Subtenant (1) becomes aware of any acts or omissions by third parties, or any violation of Applicable Laws by any third parties, (2) that Subtenant believes may cause injury or death to person or damage to property, and (3) if Subtenant reasonably believes that it may be unsafe or ineffective for Subtenant to take action or otherwise to stop those acts, omissions, or violations of Applicable Laws, then Subtenant shall have fulfilled its duties under this Section 2.9 by promptly notifying the police or other appropriate municipal official. Subtenant acknowledges and agrees that the City, in its sole and absolute discretion, will perform police and fire municipal public safety functions in connection with the Premises as it would in the absence of this Sublease, the Improvements, and Subtenant's Programs.

2.9.5 Subtenant must 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 in connection with Subtenant's activities on the Premises.

ARTICLE 3 **TERM; RENEWAL**

3.1 Commencement Date. This Sublease shall commence on December 1, 2007 (the "**Commencement Date**").

3.2 Initial Term. The "**Initial Term**" of this Sublease shall begin on the Commencement Date and shall expire one day before the fifth (5th) anniversary of the Commencement Date.

3.3 Renewal Term.

3.3.1. Following expiration of the Initial Term, this Sublease will renew for up to two additional two-year periods and then an additional one-year period (each renewal period, a “**Renewal Term**”), provided that Subtenant has not committed any Event of Default under this Sublease.

3.3.2. Each Renewal Term shall commence immediately following expiration of the Initial Term or expiration of the preceding Renewal Term, as the case may be. If Subtenant has not satisfied the condition set forth in 3.3.1 above, then this Sublease will not renew for the next subsequent Renewal Term, in which case this Sublease will expire at the end of the Initial Term or then-current Renewal Term, as the case may be.

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

ARTICLE 4

RENT

4.1 Rent. As “**Rent**” for the Term, Subtenant shall pay \$1.00 to the City.

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

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

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

4.2.3. any and all damages to the Premises caused by any act, omission, or negligence of Subtenant, its officers, employees, agents, Contractors, subcontractors or licensees, or damages caused by other occupants or users of the Premises (reasonable wear and tear excepted), other than the City, the Commission, their employees, agents, contractors, and invitees; and

4.2.4. any and all sums which Subtenant may be required to pay to Landlord, the City, any utility provider, or any other third party under any other provision(s) of this Sublease.

4.3 No Consequential Damages. Under no circumstances shall Subtenant be responsible for paying as Additional Rent any consequential damages suffered or incurred by the City or Landlord for any reason whatsoever.

ARTICLE 5
UTILITIES; TAXES

5.1 Utilities; Late Charges; No Landlord or City Liability; Electricity For Lighting.

5.1.1. Except as set forth in Subsection 5.1.3, Subtenant must promptly pay all charges and fees when and as they become due for all public utilities and utility service used at the Premises, including but not limited to gas, steam, heat, light, electricity, telephone, sewer rents, water meter and water charges. Subtenant must, 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.

5.1.2. Without limiting the requirements set forth above in section 5.1.1, Subtenant shall be solely liable for all late charges, interest, penalties, and fees arising from Subtenant's failure to promptly pay all charges and fees imposed by any provider of utility service to the Premises.

5.1.3. Utilities.

5.1.3.1 Subtenant shall not be responsible to pay any costs for utility service to the fountain and the restrooms at the Premises, or the cost for utility service for the lighting along footways around and through the Premises. Tenant acknowledges and agrees that neither Landlord nor City shall be liable in any way for any interruption in utilities or utility service to the Premises. Landlord shall, however, require City to endeavor to provide water and sewer services, and if those services are interrupted to restore those services in keeping with municipally reasonable practices. Landlord shall also require the City to endeavor to provide electrical service to the Premises.

5.1.3.2 Where an interruption to electrical service occurs, Subtenant shall promptly attempt to determine the source of the problem. If it appears to Subtenant that the interruption was caused by a problem outside the Premises, including but not limited to circumstances where electrical service is also interrupted in areas in the proximate vicinity outside of the Premises, then Subtenant shall be responsible for effecting a repair. If it appears to Subtenant that the interruption was caused by a problem within the Premises, including but not limited to when electrical service is interrupted only inside portions or all of the Premises, or if the location of the cause of the interruption is unknown, then Subtenant shall promptly notify the City.

5.1.3.3 Landlord shall require City, upon notice to the City from Subtenant under Section 5.1.3.2, to promptly diagnose the cause of the interruption and if, after reasonable investigation, the City determines that (a) the source of the interruption is not on the Premises, the City shall notify Subtenant and shall have no obligation to effect a repair; or (b) the source of the interruption is within the Premises,

the City shall endeavor to promptly effect a repair in keeping with municipally reasonable practices.

5.1.3.4 Notwithstanding the other provisions of this Subsection, neither Landlord nor the City shall be liable to repair or restore, or for the costs to repair or restore, any interruption of utility services in and on the Premises caused by the act or omission of Subtenant, and Subtenant shall be solely liable to repair or restore such interruptions.

5.1.4 Wherever practicable, Subtenant shall cause separate meters to be installed to measure all utilities to be paid for by Subtenant.

5.2 Taxes. Subtenant must 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 Subtenant’s activities on the Premises. Without limiting the requirements set forth above in this section 5.2, Subtenant shall be solely liable for all late charges, interest, penalties, and fees arising from Subtenant’s failure to promptly pay all Assessments related to Subtenant’s activities on the Premises.

5.3 Landlord and City Not Obligated to Pay. Landlord and City are not obligated at any time during the Term to pay for any utility services of any kind provided to Subtenant or related to Subtenant’s activities on the Premises. Landlord and City are not obligated at any time during the Term to pay any Assessments related to Subtenant or Subtenant’s activities on the Premises.

ARTICLE 6 **ALTERATIONS AND IMPROVEMENTS**

6.1 Definitions: Alterations and Improvements.

6.1.1. As used in this Sublease, the words “**Alteration**” and “**Alterations**” mean any and all work done by Subtenant, any of its Contractors, or on behalf of either Subtenant or its Contractors, in, on, or to the Premises or any part of the Premises that is capital in nature, including but not limited to construction, changes, additions, renovations, and replacements upon, in, or to capital elements of the Premises or any part of the Premises and other work typically characterized as capital in nature. Alteration and Alterations include but are not limited to all changes to the structure, supporting walls, foundation, roof, windows, building systems, conduits, cables, and electrical lines of the Premises or any part of the Premises, and installation of any fixture on any part of the Premises.

6.1.2. In this Sublease, the word “**Improvements**” means all existing and future structures and physical developments in, on, and about the Premises. In addition, unless otherwise specified in this Sublease, all references in this Sublease to the Premises include the Improvements. Separate references to the Premises and Improvements, or to

the Premises by itself, does not exclude the Improvements from the meaning of the Premises.

6.2 Subtenant Must Not Make Alterations Without Prior City Approval.

6.2.1. Except as explicitly provided in this Sublease, Subtenant must not make or cause any Alterations, without the prior review and written approval of the City. As part of the City's prior review, the Subtenant must submit to the City detailed plans and specifications for the proposed Alterations and all additional information requested by the City. Subtenant acknowledges and agrees that the City's approval of any Alterations may be conditioned upon a requirement that Subtenant provide the City with a performance and payment bond satisfactory to the Landlord and City in all respects and upon other requirements the Landlord and City deems necessary or prudent to protect their respective interests. Landlord will require the City to endeavor to review Subtenant's request for approval of proposed Alterations within thirty (30) days of receipt of Subtenant's request.

6.2.2. Any Alterations approved by City pursuant to the License Agreement shall be deemed approved under this Sublease as well.

6.3 Subtenant Must Perform Approved Alterations. Following City's approval of any proposed Alterations pursuant to this Sublease, Subtenant's plans and specifications approved by the City for such Alterations shall automatically become part of this Sublease. Subtenant must make, or cause to be made, the approved Alterations:

6.3.1. at Subtenant's sole cost and expense,

6.3.2. diligently,

6.3.3. in a good and workman-like manner,

6.3.4. in strict accordance with the plans and specifications approved by the City, and

6.3.5. in compliance with all Applicable Laws.

Subtenant may elect not to perform part, but not all, of the approved Alterations for good cause prior to their installation, provided that Subtenant must first provide a written notice to the Executive Director explaining the reason for Subtenant's election.

6.4 Alterations Become Part of Premises. Except as expressly provided otherwise by City in the License Agreement, or in this Article 6, or in any consent or approval required under this Sublease, all Alterations performed on the Premises or any of the Improvements shall, upon completion, become part of the Premises and the property of the City that is leased by Landlord under the Master Lease and is subleased to

Subtenant under this Sublease. Subtenant's Trade Fixtures shall not be deemed part of the Premises.

6.5 Fixtures. Subtenant must not install any fixtures in or on the Premises or any of the Improvements except as an Alteration approved under this Sublease. Upon the expiration or earlier termination of this Sublease, Subtenant must:

6.5.1. promptly remove any and all of its Trade Fixtures and, unless the parties agree otherwise, the following Improvements: the mini-golf course and the carousel (with accessory ticket booth). Any additional Improvements not approved by the City on the Effective Date shall also be removed, unless otherwise agreed;

6.5.2. restore any damage to the Premises or any of the Improvements caused by the installation or removal of the Trade Fixtures and any other Improvements by Subtenant; and

6.5.3. return the Premises to City in good condition, broom clean, and in the same or similar condition as when Subtenant completed the Renovations (except for the Designated Improvements), reasonable wear and tear excepted.

ARTICLE 7

MAINTENANCE, REPAIRS, AND REPLACEMENTS

7.0 Definitions: Maintenance and Repair.

7.0.1. In this Sublease, 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 Sublease. 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.

7.0.2 In this Sublease, 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 Sublease. Repair and Repairs include but are not limited to work that is routine, ordinary, extraordinary, foreseen, unforeseen, capital in nature or otherwise, including but not limited to Alterations.

7.1 Subtenant Obligated to Maintain and Repair the Premises.

7.1.1. During each Operating Season, Subtenant must Maintain and Repair the Premises at Subtenant's sole cost and expense and in accordance with the terms of this Sublease. Subtenant's obligation to Maintain and Repair the Premises includes the structural and nonstructural parts of the Improvements and their plumbing,

mechanical, and fire suppression systems, roofs, exterior walls, interior walls, windows, foundations, water supply systems, sewage disposal systems, and heating, ventilation, air conditioning and electrical systems.

7.1.2. During each Off Season, Subtenant shall not be responsible to Maintain and Repair the Premises. Whenever, however, the need for any Maintenance or Repair arises during an Operating Season but Subtenant cannot reasonably complete the Maintenance or Repair before the end of the same Operating Season, then Subtenant must diligently perform and complete such Maintenance and Repair during the immediately following Off Season.

7.1.3. Notwithstanding the preceding provisions of this Section 7.1, Subtenant shall not be responsible at any time during the Term for maintaining the lights along public walkways in, around and through the Premises, for snow removal in, around and through the Premises, or for repairing the sidewalks around the perimeter of the Premises.

7.2 City Maintenance and Repair of the Premises.

7.2.1. Subtenant acknowledges that under the Master Lease, during each Operating Season, the City is not obligated to (1) Maintain or Repair the Premises (2) pay for any Maintenance or Repair of or to the Premises; or (3) except as expressly set forth in this Section 7.2, to furnish any services or facilities to Subtenant, or any part of the Premises. Subtenant expressly waives any and all rights it may have under Applicable Laws to Maintain or Repair all or any part of the Premises at the expense of Landlord or the City.

7.2.2. Subtenant acknowledges that under the Master Lease, during each Off Season, the City will endeavor to Maintain and Repair the Premises (but not Subtenant's Improvements) consistent with the City's standards and procedures for maintenance and repair of similar City facilities, as those standards and procedures may be changed from time to time. Subtenant further acknowledges and agrees that under the Master Lease the City's Maintenance and Repair of the Premises shall include snow and ice removal consistent with the City's standards and procedures for snow and ice removal from footways around and in similar facilities, as those standards and procedures may be changed from time to time. Subtenant further acknowledges and agrees that the City's Maintenance and Repair of the Premises is subject to availability of funds appropriated by Philadelphia City Council for such Maintenance and Repair.

7.3 Maintenance and Repair Alterations. All of Subtenant's Maintenance and Repairs that constitute Alterations are subject to the requirements of Article 6 above. In the event of an emergency during the Operating Season posing an immediate, bona fide threat of danger to the health or safety of any persons, animals, or property, however, Subtenant may perform all Maintenance and Repairs necessary to secure the Premises and prevent injury or property damage, but Subtenant must at its very first opportunity inform the City about such Maintenance or Repair and must obtain the City's prior

approval for any additional future Maintenance or Repairs that may be necessary or prudent.

7.4 Exterior Maintenance and Repairs; Litter; Graffiti; Turf and Trees.
During each Operating Season:

7.4.1 Subtenant must promptly Maintain and Repair all exterior portions of the Premises, including but not limited to all playgrounds and sidewalks (but not the perimeter sidewalks around the Premises).

7.4.2 Subtenant must promptly keep the exterior portions of the Premises in clean and orderly condition, free of debris, garbage, rubbish, overgrowth, and unlawful obstructions.

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

7.4.4 Subtenant must promptly Maintain the lawn and field areas in and about the Premises. Subtenant shall not be responsible for maintenance of any trees in the Premises. Subtenant must not landscape any part of the Premises nor trim, prune, or remove any trees or shrubs on the Premises without obtaining the prior written approval of the City arborist. In the event of an emergency posing a threat of imminent harm to the health and safety of persons or property caused by a tree or tree limb, however, Subtenant shall have a duty to obtain the prior approval of the City arborist only if feasible and, if not feasible, to provide notice promptly following any emergency safety actions (for example, erecting a barrier around the suspect tree or its “drip line” until the City arborist can inspect it, cutting down a tree limb that has broken but remains hanging from a tree, or cutting and removing a fallen tree limb) taken by Subtenant and then subsequently to follow the directions of the City arborist concerning further safety and restoration measures. Subtenant must plant only species of trees, bushes, flowers, vines, and other plantings that are native to the Philadelphia region. Subtenant may submit a plan of regular landscape Maintenance (“**Landscape Plan**”) for City approval. If the City approves Subtenant’s Landscape Plan, then Subtenant may perform landscape Maintenance in accordance with the Landscape Plan without having to obtain subsequent approval of the City. Subtenant must obtain the City’s prior approval, however, before changing or deviating from Landscape Plan. Without limiting the other provisions of this Section 7.4.4, Subtenant must conduct landscape Maintenance, “spring cleaning,” and “fall clean up” in accordance with the standards of the Commission set forth in **Exhibit C**, which is attached to and part of this Sublease.

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

damage that is capital in nature. In addition, Subtenant must promptly Repair (or cause the Repair of) every injury or other damage to the Premises, except when such injury or damage is caused by a person other than Subtenant or any of its Contractors, licensees, or invitees. For purposes of this Section 7.5, reasonable wear and tear will not be deemed to be waste, damage, disfigurement, or injury to the Premises.

7.6 [Intentionally deleted.]

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

7.7.1 Subtenant acknowledges that under the Master Lease City, and under this Sublease Landlord, may, each in its sole discretion, perform any or all Maintenance and Repairs that may be necessary or prudent by reason of any Event of Default arising from Subtenant's failure to Maintain or Repair the Premises as required by this Sublease. Nothing in this Sublease, however, creates or implies any duty on the part of the Landlord or City to make any Maintenance or Repairs, whether capital in nature or otherwise, during the Operating Season.

7.7.2 Landlord's or the City's performance of any Maintenance or Repairs at any time during the Term does not waive any default by Subtenant in failing to perform the Maintenance or Repair as required under this Sublease.

7.7.3 If the Landlord or City elects to perform any Maintenance or Repairs that Subtenant is required to make under this Sublease, then neither Landlord nor the City will in any event be liable to Subtenant for inconvenience, annoyance, disturbance, or other damage arising from the Maintenance or Repairs performed by Landlord or the City or by bringing materials, supplies and equipment onto the Premises during the course of any Maintenance or Repairs.

7.7.4 If Landlord or the City elects to perform any Maintenance or Repairs pursuant to Section 7.7. 1 above, then Subtenant must promptly pay the Landlord or City, as the case may be, as Additional Rent the actual cost of any and all such Maintenance and Repairs due to Subtenant's failure to perform the Maintenance or Repairs, plus an administrative fee equal to 10% of the actual cost of the Maintenance and Repair.

7.8 Maintenance and Repair Account.

7.8.1 Within six (6) months following the Commencement Date, Subtenant must open a depository account ("**Maintenance Account**") with a bank or bank branch located in the City of Philadelphia. The Maintenance Account shall be dedicated exclusively for Maintenance and Repair of the Premises.

7.8.2 Subtenant must deposit not less than \$10,000 into the Maintenance Account initially, and then \$5,000 on the first anniversary of the Commencement Date. Thereafter, the Maintenance Account shall maintain a balance of at least \$15,000 at all

times during the Term (unless this Sublease is terminated earlier); provided, that if Subtenant makes a withdrawal, it shall have sixty (60) days to restore the Maintenance Account to a \$15,000 balance.

7.8.3 Throughout the Term, Subtenant may use money from the Maintenance Account to pay for Alterations approved by the City in accordance with Article 6 above; provided, that such approval shall not be unreasonably withheld or delayed.

7.8.4 Subtenant acknowledges that under the Master Lease and this Sublease, all withdrawals from the Maintenance Account must be approved in writing by both the City and Subtenant. For withdrawals requested by the Subtenant, Landlord shall require the City not to withhold its approval unreasonably in any respect.

7.8.5 Upon expiration or earlier termination of this Sublease, Subtenant may use money from the Maintenance Account to remove Designated Improvements in accordance with Section 18.2 below. All funds remaining in the Maintenance Account after Subtenant completes removal of the Designated Improvements shall be withdrawn by Subtenant, and may be used for its own purposes.

ARTICLE 8 **NO MECHANICS' LIENS**

8.1 Waivers of Mechanics' Liens. Subtenant waives its right to have filed against the Premises any mechanic's or materialman's lien. In addition, where the estimated cost of any Alteration, Maintenance, or Repair is Fifteen Thousand Dollars (\$15,000.00) or more, each contract entered into by Subtenant for the Alteration, Maintenance or Repair must obligate the Contractor to submit to the Landlord and City a waiver of mechanics' lien before the date that the Contractor begins work under the contract. Each waiver of mechanics' lien required by this Section 8.1 must be in a form acceptable to Landlord and to the City Solicitor.

8.2 No Consent by Landlord or City to Mechanics or Materialman's Lien. Nothing contained in this Sublease may be construed in any way as constituting the consent or request of either Landlord or the City, express or implied, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific Alteration, Maintenance, Repair or other work to the Premises or any part of the Premises. Nothing contained in this Sublease may be construed in any way as giving Subtenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any lien against the interest of Landlord or the City in the Premises or any part of the Premises. Subtenant and all of its Contractors are notified by this Section 8.2 that the Landlord and the City expressly do not consent to the filing of any lien against the interest of either of them in the Premises or any part of the Premises.

ARTICLE 9
INSURANCE

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

9.1.1. Workers' Compensation and Employers' Liability

- a.** Workers Compensation -- Statutory Limits;
- b.** Employers Liability:
 - \$100,000 Each Accident - Bodily Injury by Accident;
 - \$100,000 Each Employee - Bodily Injury by Disease;
 - \$500,000 Policy limit - Bodily Injury by Disease;
- c.** Other states endorsement including Pennsylvania.

9.1.2. General Liability Insurance

- a.** Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 personal and advertising injury; \$2,000,000 general aggregate and \$100,000 fire legal liability.
- b.** Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors; employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations) liability; and sexual abuse/molestation liability coverage.

9.1.3. Commercial Automobile Liability Insurance

- a.** Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury and property damage liability;
- b.** Coverage: Owned, hired and non-owned vehicles.

9.1.4. Professional Liability Insurance (if applicable)

- a.** Limit of Liability: \$1,000,000 per occurrence with a deductible not to exceed \$50,000;
- b.** Coverage: errors and omissions;

c. Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences arising out of the performance of services required under the Contract shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) years after the expiration of the Contract.

9.1.5. Property Insurance.

"All Risk" property insurance in the amount equal to the full replacement value of the Premises with no penalty for coinsurance, including coverage during any construction or reconstruction period.

9.1.6 Liquor Liability Insurance.

If alcohol will be sold, served, or distributed by Subtenant or any caterer or third party working in, on, or about the Premises, Liquor Liability Insurance for liability arising out of the manufacture, distribution, sale or service of alcoholic beverages at limits not less than \$1,000,000 combined single limit per occurrence, or such other amount as may be reasonably determined by the City's Risk Manager.

9.1.7 Umbrella Liability Insurance

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

9.2 Additional Insurance. Throughout the Term Subtenant must promptly obtain and maintain Insurance against such other hazards, risks or perils, and in such amounts as reasonably may be requested by the Landlord or City and as subtenants 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 Subtenant's Contractors' Insurance. Throughout the Term, Subtenant must 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 Landlord or the City.

9.4 Landlord and City Must Be Named as Additional Insured, Loss Payee. Subtenant must cause Landlord and the City of Philadelphia to be named as additional insured on all policies required under this Sublease except the Workers Compensation, Employers' Liability, Property Insurance, and Professional Liability policies. Subtenant must cause the City of Philadelphia to be named as a loss payee on the Property Insurance policy. Subtenant must cause all Insurance policies to include an endorsement stating that the coverage afforded Landlord and the City as additional insureds is primary to any other coverage available to either of them.

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

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

9.7 Notice of Change, Cancellation, Non-Renewal, or Lapse. Subtenant must cause all insurance policies to provide for at least thirty (30) days prior written notice to be given to the Landlord and City in the event the coverage is materially changed, canceled, not renewed, or scheduled to expire or lapse. At least ten (10) business days prior to the expiration of each policy, Subtenant must deliver, or cause to be delivered, to Landlord and the City certificates of insurance evidencing the replacement policy(ies) that must become effective immediately upon the termination of the previous policy(ies).

9.8 Landlord and City Not Limited In Proof of Damages. In the event Subtenant fails to obtain and maintain the Insurance, or fails to cause its Contractors to obtain and maintain the Insurance, neither Landlord nor the City is limited in the proof of any damages that either of them may claim against Subtenant or any other person or entity to the amount of the premium or premiums not paid or incurred and that would have been payable upon such Insurance. Rather, Landlord and the City are entitled to recover as damages for Subtenant's failure the uninsured amount of any loss, damages and expenses of suit and costs, including without limitation reasonable cancellation fees, suffered or incurred during any period when Subtenant shall have failed or neglected to provide the Insurance as required herein.

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

9.10 Application of Insurance Proceeds. All insurance money paid on account of damage to or destruction of the Premises, less the actual cost, fees and expenses, if any, incurred in connection with the adjustment of the loss, may, at the election of the City, be applied to either (1) payment of the cost of the restoration, repairs, replacement, rebuilding or alterations, of the Premises, including without limitation the cost of temporary repairs to the Premises pending the completion of permanent restoration,

repairs, replacements, rebuilding or alteration of the Premises, or (2) removal of the Premises and restoration of the Premises to its condition prior to Lessee's entry onto the Premises subject to the Executive Director's reasonable satisfaction.

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

9.12 No Concurrent Insurance. Subtenant must 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 Landlord and the City as additional insureds. Subtenant must immediately notify Landlord and the City whenever Subtenant or its Contractors obtain such separate insurance, and Subtenant must deliver or cause its Contractors to deliver to Landlord and the City certificates of insurance in accordance with Section 9.5 above and, promptly following request by Landlord or the City, certified copies or duplicate originals of such policies.

ARTICLE 10

LIABILITY FOR PREMISES; INDEMNIFICATION; RELEASE

10.1 Subtenant Has Care Custody and Control of Premises. Throughout the Term of this Sublease, during each Operating Season, subject only to City's title to the Premises and all terms in this Sublease expressly to the contrary, Subtenant has exclusive care, custody, and control of the Premises.

10.2 Indemnification.

10.2.1 Subtenant shall indemnify, defend and hold harmless Landlord and 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 or arise, in whole or in part, directly or indirectly, as a result of or in connection with: (1) any act or omission of Subtenant or Subtenant's Contractors, licensees, and guests, and Subtenant's subtenants (if any); (2) Subtenant's act or omission in Subtenant's use, operation, occupancy, Alteration, Maintenance, or Repair of the Premises or any part of the Premises under this Sublease or the Construction License Agreement; (3) Subtenant's act or omission, or the act or omission of any Contractors, in the exercise of any right and or performance of any obligation under or related to this Sublease; (4) Subtenant's act or omission or the act or omission of any Contractors, in maintaining the condition of the Premises or any part of the Premises; (5) the condition of the Premises or any parts of the

Premises resulting from Subtenant's use, Maintenance, Repair, or Alteration of the Premises; and (6) any violation or alleged violation of Applicable Law by Subtenant or any of its Contractors arising under or relating to this Sublease. Notwithstanding the foregoing, Subtenant is not responsible for indemnifying Landlord or the City for any losses, claims, suits, actions, damages, expenses or liabilities which are a result of the gross negligence or willful misconduct on the Premises after the Commencement Date.

10.2.2 City acknowledges and agrees that Section 10.2.1 does not obligate Subtenant to indemnify the City for claims arising solely and exclusively from conditions existing on the Premises before the License Agreement Commencement Date or other claims to the extent they arise from those conditions. Subtenant shall indemnify, defend, and hold harmless City and Landlord, however, for any disturbance of conditions existing before the License Agreement Commencement Date caused by Subtenant or its Contractors, officer, employees, subcontractors, agents, licensees, guests, and subtenants.

10.2.3 City acknowledges and agrees that Section 10.2.1 does not obligate Subtenant to indemnify the City for claims arising solely and exclusively from criminal acts on the Premises by persons who are not officers, directors, employees, agents, contractors, or subcontractors of Subtenant or its contractors.

10.2.4 City acknowledges and agrees that Section 10.2.1 does not impose personal liability on Subtenant's officers and directors.

10.2.5 Section 10.2 shall survive the expiration or earlier termination of this Sublease.

10.3 Defense. In case any action or proceeding is brought against Landlord or the City relating to any matter for which Subtenant has covenanted to indemnify, defend, and hold harmless Landlord and the City under this Sublease, then upon written notice from Landlord or the City, Subtenant must, at its sole cost and expense (including without limitation attorneys fees and litigation costs), resist or defend such action or proceeding by counsel approved by the Landlord and City Solicitor of the City in writing; except that (1) no approval of counsel is required in each and every instance where the claim or proceeding is resisted or defended by counsel of an insurance carrier obligated to so resist or defend such claim or proceeding, and (2) Landlord and the City may each engage at their respective expense their own counsel to participate in the defense of any such claim or proceeding. Without limiting the generality of Section 22.6, the provisions of this Article 10 will survive the expiration or termination of this Sublease. This Section 10.3 shall survive the expiration or earlier termination of this Sublease.

10.4 Release. In consideration of the Sublease given to Subtenant by the Landlord, Subtenant, for itself and its Contractors, officers, employees, representatives, agents, successors and assigns, and subtenant, and any person claiming by, through, or under them or any of them (collectively, the "**Releasing Parties**"), remises, quitclaims, releases and forever discharges Landlord and the City and their respective officials, officers, employees, boards, commissions, agents, successors and assigns (acting officially or otherwise) (collectively, the "**Releasees**"), from any and all, and all manner

of, actions and causes of action, suits, claims, liabilities and demands whatsoever in law or in equity (collectively, “**Claims**”) which the Subtenant or any of the Releasing Parties may have against Landlord, City or any of the Releasees, relating in any way whatsoever, directly or indirectly to: (1) this Sublease, (2) any condition on the Premises during the Term of the Sublease, and (3) the use, occupancy, operation, and maintenance of the Premises or any part of the Premises by Subtenant or any of the Releasing Parties. Subtenant voluntarily and knowingly assumes all risk of loss, including death, that may be sustained by Subtenant or any of the Releasing Parties, and the public in general, in connection with the Premises. Notwithstanding the foregoing provisions of this Section 10.4, this release shall not apply to any such claims that are a result of the gross negligence or willful misconduct on the Premises after the Commencement Date by the Releasees and/or their invitees or affiliates. This Section 10.4 shall survive the expiration or earlier termination of this Sublease.

10.5 Sovereign Immunity. Nothing in this Sublease waives or modifies the rights, immunities, defenses, and limitations available to the Landlord or the City under that act commonly called the “Pennsylvania Political Subdivision Tort Claims Act,” Act No. 142, October 5, 1980, P.L. 693, 42 Pa.C.S.A. §§ 8501 et seq. (as may be amended). In addition, nothing in this Sublease waives or modifies any other rights, immunities, defenses, limitations and other benefits available to the Landlord or the City under other Applicable Laws.

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

11.1 Material Destruction. Tenant acknowledges that under the Master Lease if in the City’s judgment the Premises have been substantially or totally destroyed by fire, explosion, windstorm, tornado or other casualty, or if the Premises should be damaged so that, in the City’s reasonable discretion, Landlord’s and Subtenant’s ability to use the Premises for the purposes set forth in this Sublease will be impaired for a period greater than one hundred eighty (180) calendar days after written notice by Subtenant to Landlord and the City of the destruction (“**Material Destruction**”), then the City may at its option terminate the Master Lease and Sublease as of the date of the Material Destruction by delivering to Landlord and Subtenant written notice of termination, and upon Subtenant’s receipt of the City’s termination notice this Sublease will absolutely cease and terminate and the parties shall be relieved of all future liabilities.

11.2 Partial Destruction. Tenant acknowledges that under the Master Lease if the damage by fire, explosion, windstorm, tornado or other casualty can, in the sole judgment of the City, be reasonably rebuilt or repaired within 180 calendar days from the date of the written notification by Subtenant to Landlord and City of the destruction (“**Partial Destruction**”), the City may at its option terminate the Master Lease and this Sublease or continue the Master Lease and this Sublease for the permitted use by giving written notice to the Subtenant. Should City elect to continue the Master Lease and Sublease, Subtenant must promptly repair the Partial Destruction. In accordance with

Section 9.4 above, the City will hold the insurance proceeds from the Property Insurance required under Section 9.1 above. Landlord shall require the City to release such Property Insurance proceeds to Subtenant or Subtenant's Contractors upon Subtenant's presentation to the City of invoices for completed Repairs of the Partial Destruction, or at such earlier time as the City determines in the City's discretion. Subtenant must apply the Property Insurance proceeds to cover losses sustained from the Partial Destruction. Subtenant is obligated to continue this Sublease if City so chooses following any Partial Destruction.

11.3. Damage or Destruction During Last Years of Term. Subtenant shall have the right, under the circumstances described in the next sentence that would excuse the obligation of Subtenant to restore the Premises, to terminate this Sublease, by notifying Landlord and the City in writing within sixty (60) days after such date of damage or destruction. If, during the last two (2) years of the Term or the last year of a Renewal Term (if any), an Alteration shall be damaged so that it is reasonably determined by the City and Subtenant that the cost would make restoration thereof unfeasible, notwithstanding the availability of insurance proceeds therefor and the Maintenance Account, Subtenant may terminate this Sublease within sixty (60) days after such damage by giving written notice to the Landlord and City. Within one hundred eighty (180) days after such termination, Subtenant shall raze the then existing damaged Improvements and clear the Premises of debris and rubble and restore the Premises to open park space (unless otherwise specified by the City in writing to Subtenant), to the City's reasonable satisfaction. The City and Landlord agrees to make available to Subtenant any insurance proceeds payable to the City and/or Landlord attributable to such damage or destruction of the Premises to be used by Subtenant to raze the Alterations, clear the land of debris and rubble, and restore the Premises to open park space.

ARTICLE 12 **CONDEMNATION**

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

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

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

ARTICLE 13
NO SUBLEASES OR ASSIGNMENTS

13.1 Sub-sublease Prohibited.

13.1.1 Subtenant must not sub-sublease, assign, delegate, or transfer this Sublease or Subtenant's rights or obligations under this Sublease, either in whole or in part, including but not limited to any purported assignment by merger, operation of law, or change of control of Subtenant. Subtenant must not mortgage, pledge, or otherwise encumber this Sublease or Subtenant's leasehold estate in the Premises, without on each occasion first obtaining the prior written consent of Commission, which Subtenant acknowledges that the Commission may withhold in its sole discretion and for any reason or no reason. Any sub-lease, assignment, delegation, or transfer in violation of this Section 13.1 is void.

13.1.2 Any approval by the Commission of any sub-sublease, assignment, transfer, or other encumbrance of this Sublease by Subtenant is expressly conditioned upon the proposed new sub-subtenant, assignee, transferee, or other encumbrance holder executing and delivering to the Landlord and City an assumption of liability agreement, in form satisfactory to Landlord and the City, including, without limitation, ratification of and agreement to be bound by all of the provisions of this Sublease. Unless such proposed sub-subtenant, assignee, transferee, or other encumbrance holder delivers such assumption of liability, the sub-sublease, assignment, transfer, or encumbrance shall not be effective and Subtenant shall remain fully responsible for its obligations and liabilities under this Sublease.

13.2 Consent to Sublease Does Not Waive Compliance. Any consent by the Commission to a sub-sublease, assignment, or transfer of this Sublease by Subtenant is not a waiver of Subtenant's strict future compliance with the provisions of this Article 13 or a release of Subtenant from Subtenant's obligation to fully perform the provisions of this Sublease.

ARTICLE 14
SUBTENANT'S RECORDS; ANNUAL REPORTS; CORPORATE DOCUMENTS

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

14.2 City May Audit. Tenant acknowledges that under the Master Lease the City, or its duly authorized representatives, may inspect and audit all of Subtenant's Books and Records and Subtenant's affairs at all reasonable times at the Premises, the City's offices, or other place the City may reasonably require.

14.3 Subtenant's Reports. On or before 60 days following each anniversary of the Commencement Date during the Term, and on or before 60 days following the expiration or earlier termination of this Sublease, Subtenant must submit to the City a report that includes (1) a description of the activities undertaken by Subtenant on or with respect to the Premises, (2) a detailed income and expenses statement with respect to Subtenant's activities on the Premises for Subtenant's most recently completed fiscal year, (3) audited annual financial statements of Subtenant, and (4) a copy of Subtenant's completed and filed IRS Form 990. Subtenant must also promptly submit to the City all supplemental reports, documents, records, and other information that the City may reasonably require that are pertinent to Subtenant's activities on the Premises.

14.4 Subtenant's Corporate Documents. Subtenant warrants that copies of its Corporate Documents are attached as **Exhibit D** to this Sublease and that such copies are true, correct, complete and current as of the Commencement Date.

ARTICLE 15

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

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

15.2 Non-Indebtedness. By executing this Sublease, Subtenant represents, warrants, and certifies that Subtenant and Subtenant's parent company(ies), subsidiary(ies), and affiliate(s), if any, and all entities under common control with Subtenant, are not currently indebted to the City and will not at any time during the Term be indebted to the City for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the Landlord under this Sublease, at law and or in equity, Subtenant acknowledges that any breach or failure to conform to this certification may, if the breach

or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, result in the termination of the Master Lease and this Sublease for default (in which case Subtenant is be liable for all excess costs and other damages, including but not limited to those set forth in Article 17 of the Sublease, resulting from the termination). Nothing set forth in this Article must limit the generality of Article 17.

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

Contractor (or subcontractor, as the case may be) represents and certifies that contractor and contractor's parent company(ies) and subsidiary(ies) are not currently indebted to the City of Philadelphia ("City") and will not at any time during the "Term" of Subtenant's Sublease with the Philadelphia Authority for Industrial Development be indebted to the City for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available at law or in equity, contractor acknowledges that any breach of or failure to conform to this certification may, at the option and direction of the City, result in the termination of the Mater Lease and this Sublease (in which case contractor will be liable for all excess costs and other damages resulting from the termination).

15.4 Exclusionary Organizations.

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

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

15.4.3 Subtenant further agrees to cooperate with the Commission on Human Relations of the City in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the Philadelphia Code. Subtenant's failure to so cooperate is, without limiting the generality of Article 17, a substantial breach of this Sublease entitling the Landlord to all rights and remedies provided in this Sublease or otherwise available in law or equity.

15.5 Northern Ireland; MacBride Principles.

15.5.1 In accordance with Section 17-104 of the Philadelphia Code, by executing this Sublease Subtenant represents and certifies that **(1)** Subtenant (including any parent company, subsidiary, exclusive distributor, or company affiliated with Subtenant) does not have, and will not have at any time during the Term of this Sublease, any investments, licenses, franchises, management agreements or operations in Northern Ireland and **(2)** no product to be used by Subtenant under this Sublease will originate in Northern Ireland, unless Subtenant has implemented the fair employment principles embodied in the MacBride Principles.

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

15.5.3 Subtenant agrees to cooperate with the City's Director of Finance in any manner that the Director of Finance deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of the Philadelphia Code. Subtenant expressly understands and agrees that any false certification or representation in connection with this Section 15.5, and or any failure by Subtenant or any of its suppliers, Contractors, or consultants to comply with the provisions of this Article is a substantial breach of this Sublease entitling the Landlord to all rights and remedies provided in this Sublease or otherwise available at law (including, but not limited to, Section 17-104 of the Philadelphia Code) or in equity. In addition, Subtenant acknowledges that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. Section 4904.

15.6 No Prohibited Gifts to City Officials.

15.6.1 Subtenant and its Contractors must not offer or give, directly or indirectly, anything of value to any official or employee in the Executive or Administrative branch of the City, including any gift, gratuity, favor, entertainment or

loan, the receipt of which would violate Executive Order No. 002-04 issued by the Mayor of Philadelphia on August 12, 2004.

15.6.2 Any person who offers or gives anything of value to any City official or employee the receipt of which would violate Executive Order No. 002-04 shall be subject to sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in particular City contract(s), to debarment, depending on the nature of the particular violation. The terms and duration of such sanctions shall be pursuant to such rules as the Procurement Commissioner promulgates with respect to contracts subject to competitive bidding, or as the Director of Finance promulgates with respect to all other contracts.

ARTICLE 16

QUIET ENJOYMENT; LANDLORD AND CITY RIGHT TO ENTER AND INSPECT PREMISES

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

16.2 City Right to Enter Premises. Subtenant must permit Landlord and the City to enter and traverse the Premises as a member of the public. Subtenant must 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, Subtenant must permit Landlord and the City, and any persons authorized by either of them, to enter all areas of the Premises, including but not limited to the Improvements, at all times between 9:00 a.m. and 8:00 p.m., for the purposes of, but not limited to:

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

16.3 Locks and Keys. Subtenant promises to promptly give the City two copies of all keys and alarm security codes necessary to obtain access to the Premises. Subtenant promises that it will not change the locks or alarm security codes on or for the

Premises without notifying the City. Upon changing any such locks or alarm security codes Subtenant must promptly provide the City with three copies of the keys for the new locks and the new alarm security codes. The City agrees to keep all keys, codes and other security information safe.

ARTICLE 17
DEFAULT BY SUBTENANT; LANDLORD'S REMEDIES

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

1. Subtenant fails to pay the Rent or to pay any Additional Rent within 10 days of the date the Rent or Additional Rent is due;
2. Subtenant fails to strictly comply with the provisions regarding Subtenant’s use of the Premises under Article 2 of this Sublease;
3. Subtenant fails to comply with any other provision of this Sublease, and Subtenant fails to cure its default on or before 15 days after Landlord or the City gives written notice to Subtenant of the default;
4. Subtenant 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. Subtenant at any time fails to strictly comply with Applicable Laws in any respect and fails to cure its non-compliance on or before 15 days after Landlord or the City gives written notice to Subtenant of the failure, except that if such default cannot be practicably cured because of the nature of Subtenant’s failure, then Subtenant shall not commit an Event of Default unless within such 15-day period Subtenant fails to give adequate assurance, satisfactory to Landlord and City, each in their reasonable discretion, that Subtenant shall not continue or repeat such failure to comply with Applicable Law;

6. If Subtenant is a non-profit corporation, Subtenant's status as a non-profit corporation under Section 501(c)(3) of the United States Internal Revenue Code is revoked.

17.2 Landlord's Remedies. If Subtenant commits an Event of Default, then Landlord may do one or more of the following:

1. bring legal action to recover all Rent and Additional Rent;
2. declare the Sublease immediately terminated and upon such termination Subtenant must immediately vacate the Premises and remove Subtenant's property from the Premises in accordance with Article 18 below;
3. suspend the Sublease and Subtenant's right to use some or all of the Premises;
4. bring legal action to repossess the Premises;
5. declare the Rent and all items of Additional Rent for the entire balance of the Term, immediately due and payable, together with all other charges, payments, costs, fees, and expenses payable by Subtenant as though such amounts were payable in advance on the date the Event of Default occurred;
6. bring legal action against Subtenant to recover damages suffered by Landlord and the City arising out of Subtenant's default;
7. exercise all rights and remedies available to the Landlord at law or in equity;
8. if Subtenant's Event of Default arises from Subtenant's failure to Maintain or Repair the Premises as required by this Sublease, Landlord or City may perform such Maintenance or Repair in accordance with Section 7.7 above.

17.3 Additional Remedies: Re-Entry; Distraint.

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

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

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

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

17.5 Landlord Does Not Waive Subtenant's Strict Compliance; No Waiver Except By Writing.

17.5.1 Following an Event of Default, Landlord will not be deemed to have waived Subtenant's compliance with any provision of this Sublease or any breach of this Sublease by Subtenant or any Event of Default regardless of whether Landlord (1) fails to insist upon Subtenant's strict performance of any provision of this Sublease, (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 Sublease by Subtenant or during the continuance of any Event of Default.

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

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

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

ARTICLE 18
SURRENDER OF PREMISES; HOLDOVER TENANCY

18.1 Subtenant Must Surrender Premises. On the last date of the Term, or upon the earlier termination of this Sublease, Subtenant must promptly remove its personal property and surrender and deliver up the Premises to the possession and use of Landlord without objection or delay, in similar condition to that which existed at the start of the Term, free and clear of all lettings and occupancies, and free and clear of all liens and encumbrances.

18.2 Subtenant Must Remove Improvements.

1. Upon the expiration or earlier termination of this Sublease, Subtenant must promptly remove the Designated Improvements. For purposes of this Sublease, “**Designated Improvements**” means Subtenant’s carousel and the Miniature Golf Course.

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

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

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

4. If under Section 18.2.3.c above the Landlord or City elects to remove the Subtenant’s personal property or the Designated Improvements from the Premises, Subtenant must promptly reimburse the Landlord or City for all costs of removal and restoration of the Premises upon demand from Landlord or City, as the case may be.

18.3 Landlord Not Responsible for Loss or Damage to Property. Tenant acknowledges that under the Master Lease, City, and under this Sublease Landlord, will

not be responsible for any loss or damage occurring to any property owned by Subtenant or any sub-subtenant.

18.4 Hold Over Tenancy. If, without the execution of a new sublease or a written extension of this Sublease, Subtenant, with or without the consent of Landlord or City, holds over and continues to occupy, possess, or use the Premises after the expiration of the Term or earlier termination of this Sublease, then Subtenant will be deemed to be occupying the Premises under a month-to-month holdover tenancy, which the Landlord may terminate upon 30-days written notice. During any month-to-month holdover tenancy, Subtenant must occupy the Premises in strict compliance with all the provisions of this Sublease.

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

ARTICLE 19
NOTICES

19.1 Manner of Notice.

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

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

If intended for Landlord: Philadelphia Authority for Industrial Development
2600 Centre Square West
1500 Market Street
Philadelphia, PA 19102
Attention: General Counsel

with a copy to: Executive Director
Fairmount Park
One Benjamin Franklin Parkway – 10th Floor
1515 Arch Street
Philadelphia, PA 19102

and to: City Solicitor
City of Philadelphia Law Department
One Benjamin Franklin Parkway – 17th Floor
1515 Arch Street
Philadelphia, PA 19102

If intended for the Subtenant: Executive Director
Once Upon a Nation
Historic Philadelphia, Inc.
500 Arch Street
Philadelphia, PA 19106

With a copy to: Joshua L. Grimes, Esquire
Grimes Law Offices, LLC
123 South Broad Street, 28th Floor
Philadelphia, PA 19109

19.2 Timing of Notice Received. Notice given under this Sublease shall be deemed to have been received **(1)** in the case of a letter deposited in the United States mail, upon delivery, **(2)** in the case of a hand delivery with receipt obtained, the date indicated on the receipt obtained by the courier, or **(3)** in the case of overnight delivery, on the next business day.

ARTICLE 20
TRADEMARKS; USE; INFRINGEMENT

20.1 Trademarks; Publicizing Fairmount Park.

20.1.1. Ownership. Subtenant acknowledges and agrees that city is and shall remain the exclusive owner of all the trademarks, tradenames, service marks and copyrights associated with the names and images of “Franklin Square” and “Fairmount Park” and any and all present and future related slogans, derivations, trade secrets, logos, know-how and trade dress (collectively, the “**Trademarks**”). Subtenant agrees never to contest city’s title to any of the Trademarks, the validity of any of the Trademarks, or any application or registration for any of the Trademarks filed or obtained by City.

20.1.2. Use: prohibition. Subtenant agrees that, unless City has given its prior written consent to Subtenant’s use of the Trademarks, Subtenant shall not use the Trademarks in any manner or for any purpose whatsoever. Subtenant agrees that under the Master Lease City may give or withhold its consent to Subtenant’s use of the Trademarks in City’s sole and absolute discretion.

20.1.3 Use: Permitted and Required.

a. Tenant acknowledges that under the Master Lease if City requests Subtenant to use any of the Trademarks or approves Subtenant’s other use of any of the Trademarks, Subtenant shall use such Trademarks only in such manner, on such items, and subject to such restrictions and conditions, as City may from time to time specify in writing. In addition, Tenant shall only use the Trademarks under such City approval only for the duration of this Sublease.

b. Subtenant may use the Trademarks on the types of items listed below this Section 20.1.3 in connection with Subtenant's tradename (for example, and not as a limitation, "Once Upon a Nation in Franklin Square, Fairmount Park"). Subtenant agrees that it shall obtain the City's approval of all items on which Subtenant proposes to use or place any of the Trademarks. Tenant acknowledges that under the Master Lease City may inspect and test such items and that City may approve or disapprove such proposed items in City's reasonable discretion. Tenant acknowledges that under the Master Lease if City determines that the nature or quality of any of such items offered by Subtenant using any of the Trademarks is unsatisfactory, City is required to so notify Subtenant in writing. Upon receipt of the City's notice, Subtenant shall immediately cease and desist from any further use of the Trademarks on or in connection with the unsatisfactory item.

- (1) stationery and other printed materials;
- (2) merchandise and souvenirs;
- (3) advertisements, whether broadcast, printed, optical, or electronic;
- (4) signs; and
- (5) internet web pages, internet ads, and other optical or electronic media.

c. Subtenant shall, on all its stationery and other printed materials (including but not limited to publicity brochures), refer to "Fairmount Park" in at least 12-point type size (that is, the same size as this text), in reasonably prominent placement, and not less than two-points in size less than Subtenant's own name. For example, and not as a limitation, the letterhead of Subtenant's stationery could be titled:

Once Upon a Nation in Franklin Square, Fairmount Park

d. Subtenant shall, in good faith, endeavor to include similar references to Fairmount Park in all its broadcast advertising, including but not limited to television, radio, and internet.

20.1.4. Trademark Concession Agreement. Subject to this Article 20, if either party shall request, then the other party and the requesting party shall negotiate in good faith to try and complete a Trademark licensing agreement, satisfactory in form and content to both parties.

20.1.5. Subtenant's Use Non-Exclusive. Subtenant acknowledges that any right granted to Subtenant to use the Trademarks shall be nonexclusive, and that the use of the Trademarks by City or its licensees shall not constitute a breach of this Sublease.

20.1.6. No Infringement. Subtenant shall not, either during or after the Term of this Sublease, do anything, or aid any other party in doing anything, which would constitute infringement of, diminish the value of, or otherwise damage, the Trademarks or City's rights in the Trademarks. Subtenant acknowledges that all goodwill which may arise from Subtenant's use of the Trademarks is and shall at all times remain the sole and exclusive property of City and shall inure to the sole benefit of City.

20.2 Trademark Infringement. Without limiting Landlord's remedies under Article 17 above and Article 22 below, or limiting the rights of the City under the Master Lease, Subtenant acknowledges that City shall be entitled to immediate injunctive relief against any misuse or infringement of the Trademarks by Subtenant.

20.3 Subtenant Gives License to Use Its Trademarks. Subtenant gives Landlord and the City a limited license to use any trademark of Subtenant in Landlord's or the City's marketing, advertisements and publicity about Fairmount Park and Franklin Square. The license given by Subtenant under this Section 20.3 does not extend to any retail or other promotional items sold or to be sold by Landlord or the City or any other licensee of them.

20.4 Changes in Trademarks.

20.4.1. In the event that City changes or modifies any of the Trademarks or its other trade names, trademarks or service marks, the above restrictions on Subtenant's use of the Trademarks shall be equally applicable to any such new, successor, or substitute Trademark, and all owners and or approved licensees of the rights in and to such Trademarks shall be deemed third-party beneficiaries of Subtenant's covenants contained in this Sublease.

20.4.2. Landlord will endeavor to give Subtenant advance notice of the City's intent to attempt any changes in the Trademarks so that Subtenant may control its inventory, advertising materials or other property of Subtenant accordingly. In any such instance, City shall not be liable to Subtenant for any cost, loss or expense whatsoever incurred by Subtenant with respect to any change in the Trademarks, and Landlord and City shall have no obligation to purchase from Subtenant any inventory, advertising materials or other property of Subtenant which utilizes the changed Trademark.

20.5 Subtenant Trademarks.

20.5.1. Ownership. The City acknowledges and agrees that Subtenant is and shall remain the exclusive owner of all the trademarks, tradenames, service marks and copyrights associated with the names and images of "Historic Philadelphia" and "Once Upon a Nation" and any and all present and future related slogans, derivations, trade secrets, logos, know-how and trade dress (collectively, the "**Subtenant Trademarks**"). Subtenant agrees never to contest City's title to any of the Subtenant Trademarks, the validity of any of the Subtenant Trademarks, or any application or registration for any of the Subtenant Trademarks filed or obtained by Subtenant.

20.5.2. Use: Prohibition. Subject to Section 20.3 above, the City agrees that, unless Subtenant has given its prior written consent to the City's use of the Subtenant Trademarks (which consent may be withheld in Subtenant's reasonable discretion), the City shall not use the Subtenant Trademarks in any manner or for any purpose whatsoever.

20.6 Trademark Infringement. Without limiting Subtenant's remedies under this Sublease or under law, or otherwise limiting the rights of the Subtenant, Subtenant shall be entitled to immediate injunctive relief against any misuse or infringement of the Subtenant Trademarks by the Landlord and the City.

ARTICLE 21

APPROVALS BY CITY; SUBMISSIONS TO CITY; ENFORCEMENT BY CITY

21.1 Approvals by City. Except where the provisions of this Sublease explicitly require separate approvals by both Landlord and City, any approval granted by City shall be deemed approval by Landlord.

21.2 Enforcement by City. Subtenant acknowledges and agrees that all of Landlord's rights and remedies under this Sublease may be exercised and enforced directly by City. Wherever this Sublease requires the approval of both Landlord and City, Subtenant may submit the matter requiring such approval simultaneously to Landlord and City.

21.3 Validity of City Approval.

21.3.1 Unless otherwise stated explicitly in this Sublease, any review, approval, permission, or consent that Subtenant is required to obtain directly from the City under this Sublease will not be valid or effective unless obtained or confirmed in writing from the Executive Director or the Executive Director's designee.

21.3.2 Where this Sublease requires Subtenant to obtain the approval of the Commission, however, then such approval shall not be valid or effective unless granted by the Commission by resolution.

21.3.3 Unless otherwise specified in this Sublease, all reports, notices, plans, specifications, certificates, requests for approval, and submissions that Subtenant is required to provide or submit to the City must be submitted by Subtenant to the Executive Director or the Executive Director's designee.

21.4 Effect of Reviews and Approvals by City Under This Sublease.

21.4.1 Tenant acknowledges that under the Master Lease the City's review, approval, or consent (including but not limited to any review, approval, or consent by the Executive Director or the Commission) of any plans, specifications, work

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

21.4.2 Tenant acknowledges that under the Master Lease the City's review, approval, or consent under the Master Lease and this Sublease does not constitute any review, approval, consent, license or permit otherwise required under Applicable Laws by any departments, boards, commissions, and officials of the City of Philadelphia.

21.5 Standard of City Review and Approval. Except as otherwise provided in this Sublease, whenever this Sublease requires Subtenant to obtain the approval of the City or the Commission, such approval shall not be unreasonably withheld, conditioned or delayed. The City will not be deemed to have unreasonably delayed its approval if the City acts within the time periods set forth in this Section 21.5. The Landlord shall require City to respond to all of Subtenant's written requests for approval in no more than the following periods: (i) sixty (60) days from the date of Subtenant's written request when it is determined, in the sole judgment of the Executive Director, that such request may be decided by the Executive Director or the Executive Director's designee, and not by the Commission or Commissioners, or (ii) fifteen (15) days after the second subsequent meeting of the Commission following Subtenant's written request when it is determined, in the sole judgment of the Executive Director or the Executive Director's designee, that such request requires a decision of the Commission or Commissioners (except in the case of a Force Majeure Event as provided in Section 23.14 below). Without limiting the preceding sentence, the City shall not be deemed to have unreasonably delayed its response to a request for approval unless it fails to respond within fifteen (15) days after receipt of a second written notice from Subtenant citing the City's failure to respond to Subtenant's first notice, but Subtenant may not send its second notice until at least forty-five (45) days after Subtenant's initial request for approval. Whenever this Sublease requires Subtenant to obtain the approval or consent of the City or the Commission by Commission resolution, Subtenant acknowledges and agrees that the City and the Commission shall be deemed to be acting reasonably and in good faith, and shall not have unreasonably withheld or conditioned its or their approval or consent, if the Commission acts in a manner reasonable for the exercise of its fiduciary, municipal, and political functions.

ARTICLE 22

CITY'S RIGHT TO ENFORCE SUBLEASE

22.1 Landlord May Enforce Sublease Strictly. The Landlord may enforce all provisions of this Sublease strictly, regardless of (1) any law, usage, or custom to the contrary, (2) any conduct of the Landlord or City in refraining from enforcing any provisions of this Sublease at any time, (3) any conduct of the Landlord or City in

refraining from exercising its rights and remedies under this Sublease, and (4) any course of conduct between the Landlord or City and Subtenant. Any such conduct or custom must not be construed as having created a custom in any way or manner contrary to any specific provision of this Sublease, or as having in any way or manner modified the same.

22.2 Amendment and Modification. This Sublease can only be amended, modified or supplemented by a written agreement signed by both the Landlord and Subtenant, with the written consent of the Executive Director. This Sublease cannot be amended, modified, or supplemented by any oral representations, whenever made, by any official, commissioner, or employee of Landlord or the City. This Sublease cannot be amended, modified, or supplemented by any course of conduct between the Landlord or City and Subtenant.

22.3 No Implied Consent. Landlord's failure to respond orally or in writing to any request or offer from Subtenant to modify or waive any of Subtenant's obligations under this Sublease does not constitute Landlord's consent to Subtenant's request or offer. Subtenant agrees it must strictly and promptly comply with its obligations under this Sublease unless and until its request or offer to modify or waive any provision of this Sublease is explicitly accepted in writing by Landlord.

ARTICLE 23 **MISCELLANEOUS**

23.1 Sublease Binding. Subject to Article 13 above, this Sublease is binding upon Landlord and Subtenant and their successors and assigns.

23.2 City a Third Party Beneficiary; No Other Third Party Beneficiaries. Subtenant acknowledges and agrees that the City is a third party beneficiary of this Sublease and may enforce the rights of Landlord against Subtenant under this Sublease. Nothing in this Sublease confers any benefit or right upon any other third party other than City. No person or entity is a third party beneficiary of this Sublease. All Contractors and other persons are notified by this Section 23.2 that they may not look to the Landlord or City for payment or other compensation arising under or related to this Sublease. The Landlord and City are not liable to any Contractors or other persons for payment or compensation arising under or related to this Sublease.

23.3 Integration Clause; Complete Sublease. This Sublease sets forth all the promises, agreements, conditions, and understandings between Landlord and Subtenant relative to the Premises, the Improvements now existing or in the future constructed on the Premises, and Subtenant's use of the Premises, and there are no promises, agreements, conditions or understandings, either oral or written, between them other than as set forth in this Sublease. This Sublease is the final and exclusive expression of the parties agreement regarding the matters addressed in this Sublease, and all prior negotiations and agreements are merged into this Sublease.

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

23.5 Partial Invalidity; Severability. If any provision of this Sublease or the application of any provision of this Sublease to any party or circumstance shall, to any extent, be adjudged invalid or unenforceable by a court of competent jurisdiction, the remainder of this Sublease, or the application of such provision to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such judgment and each provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by law.

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

23.7 Governing Law. This Sublease and all matters arising under or in any way related to this Sublease are governed by the laws of the Commonwealth of Pennsylvania, without giving effect to choice of law provisions.

23.8 Waiver of Jury Trial. Subtenant, so far as permitted by Applicable Laws, knowingly, voluntarily, and expressly waives trial by jury in any action, proceeding, or counterclaim arising out of or in any way related to this Sublease.

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

23.10 Interpretation. Landlord and Subtenant agree that the rule of construing or interpreting any ambiguities in an agreement against the drafter of the agreement does not apply to this Sublease.

23.11 Background. The Background paragraphs set forth above are part of this Sublease. Subtenant warrants that the representations set forth in the Background paragraphs about Subtenant's purpose and programs are true and correct.

23.12 No Broker. Subtenant warrants that it has not used the services of any broker or agent in the selection of the Premises for Subtenant's use or in the negotiation of this Sublease. Subtenant shall be solely liable for any and all commission, charges, and fees claimed by any broker in connection with the selection of the Premises for Subtenant's use or in the negotiation of this Sublease.

23.13 Counterparts. This Sublease may be executed in one or more counterparts of this Sublease, each of which when signed by both parties shall be an original, and all of which together are a single agreement.

23.14 Time of Essence; Force Majeure.

23.14.1 Time is of the essence for the performance of each covenant and term of this Sublease.

23.14.2 Notwithstanding Section 23.14.1, above, any non-monetary obligation of Subtenant which cannot be satisfied due to war, strikes (excluding strikes by Subtenant's own employees or the employees of Subtenant's Contractors and subcontractors), acts of G-d such as earthquakes, volcanoes, extreme weather, and similar occurrences, or other events which are beyond the reasonable control of Subtenant (each, a "**Force Majeure Event**"), shall be excused until the cessation of such Force Majeure Event. In no event, however, shall any Force Majeure Event excuse any obligation for longer than a 24-month period from the occurrence of such Force Majeure Event.

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

IN WITNESS OF THE COVENANTS, TERMS, CONDITIONS, AND PROVISIONS SET FORTH ABOVE, City and Subtenant have caused this Sublease to be executed and delivered as of the day and year first written above.

LANDLORD,

PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT

By: _____

SUBTENANT,

HISTORIC PHILADELPHIA, INC.

[NO SEAL]

BY: _____
President/Vice President

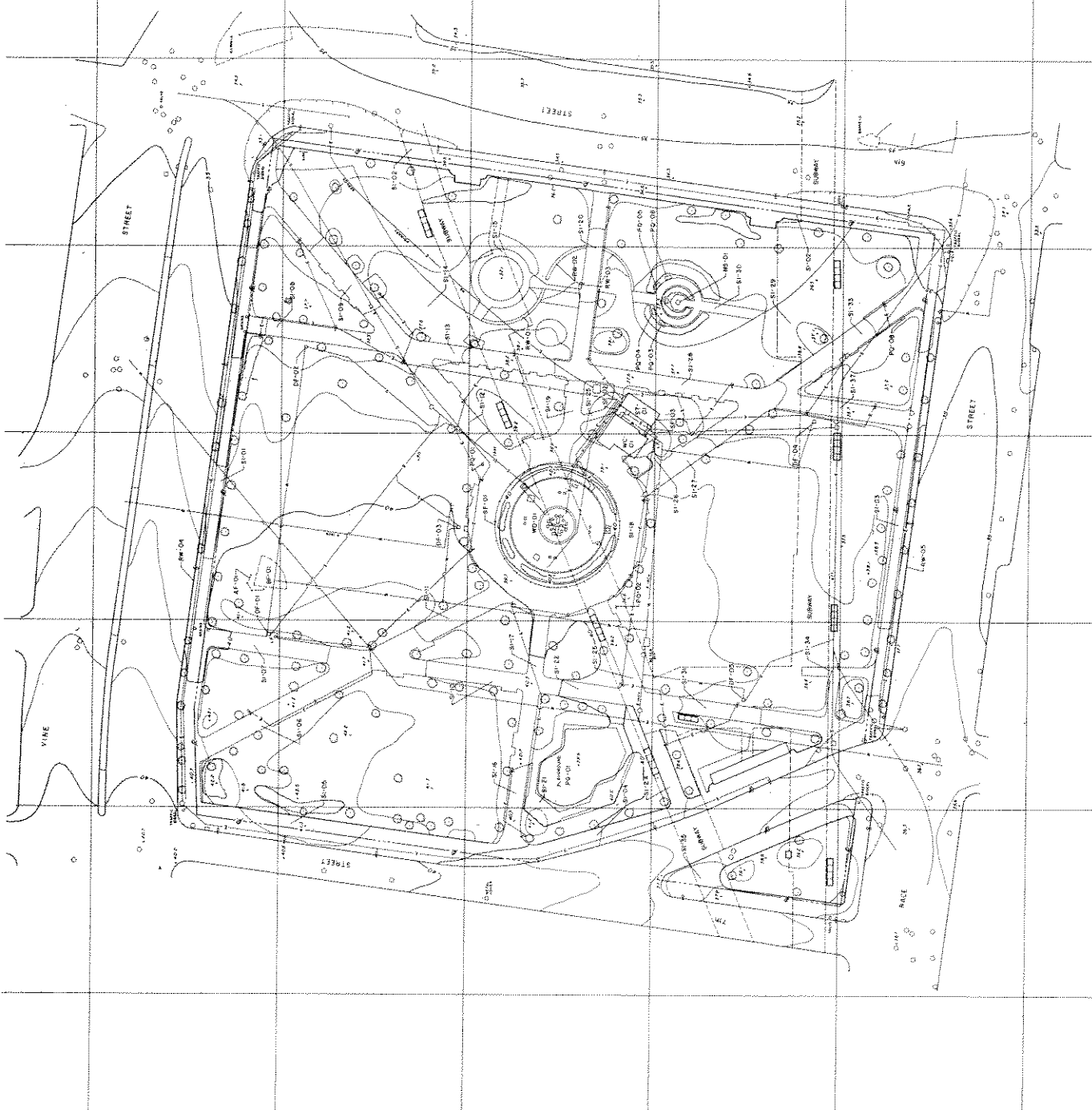
BY: _____
Secretary/Treasurer

Exhibit "A" to Sublease

Map of Premises

FRANKLIN SQUARE
SCALE 1" = 30'
DATE OF PREPARATION 1/13/67
CROSS SECTIONAL
1/8" = 1' VERTICAL DIMENSION
NATIONAL TRIANGULAR SYSTEM

FAIRMOUNT PARK COMMISSION
CITY OF PHILADELPHIA



- ALPHABETICAL LIST OF STRUCTURE CODES**
- AS ASSEMBLY BRIDGE
 - AW ARCHITECTURE
 - AM AMPHITHEATER
 - BE BASEBALL FIELD
 - BB BASEBALL COURT
 - BF BASEBALL FIELD
 - BU BUNKER
 - CB CARPENTER SHOP
 - CC CONCRETE BLOCK
 - DA DANCE HALL
 - DF DRIVEWAY
 - DI DRIVE
 - DU DRIVE
 - FE FENCE
 - FB FOOTBRIDGE
 - GA GARAGE
 - GE GYMNASIUM
 - GR GRASS
 - GU GUARDRAIL
 - HA HAMMAM
 - HP HOME
 - MA MANSION
 - MC MUSEUM
 - MD MUSEUM
 - MS MANSION
 - MT MOTOR TRUCK
 - NA NATURE
 - NU NATURE
 - OF OFFICE BUILDING
 - PF PARKING LOT
 - PE PLAYGROUND
 - PS PAVILION
 - PH PORTICO
 - PI PORTICO
 - PR PORCH
 - RS RESIDENTIAL DRIVEWAY
 - IS INDUSTRIAL STRUCTURE
 - MC MUSEUM
 - MT MOTOR TRUCK
 - NA NATURE
 - NU NATURE
 - ST STEEP
 - SW SWIMMING POOL
 - ST STORE
 - ST STORAGE
 - TT TENNIS COURT
 - UE ELECTRIC UTILITIES BUILDING
 - UM UNDERGROUND
 - VA VEHICLE
 - VR VEHICLE
 - WI WATER
 - WT WATER TOWER
 - YS YARD
 - ZZ ZOO



- L E G E N D**
- MANHOLES
 - SPLIT POLES
 - LIGHT POLES
 - HORNWAYS
 - FENCES
 - WALLS
 - MURRES
 - ARKS
 - BENCHES
 - SEATINGS
 - BANKS
 - THEATERS
 - STAIRS
 - SCALES
 - POLE
 - PIERS
 - BOARDS
 - BUILDINGS
 - THEATERS
 - SCALES
 - POLE
 - PIERS
 - BOARDS
 - BUILDINGS



Exhibit "B" to Sublease

**Description of Programs
[To be inserted.]**

Exhibit “C” to Sublease

**Fairmount Park Landscape Maintenance Standards and Procedures
[To be inserted.]**

Exhibit "D" to Sublease

**Subtenant's Corporate Documents
[To be inserted.]**

Attachment 2 to Master Lease

**Memorandum of Lease
[To be inserted.]**

City of Philadelphia

BILL NO. 070394-A continued

Certified Copy

City of Philadelphia

BILL NO. 070394-A continued

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on September 27, 2007. The Bill was Signed by the Mayor on October 18, 2007.

A handwritten signature in black ink that reads "Patricia Rafferty". The signature is written in a cursive, flowing style.

Patricia Rafferty
Chief Clerk of the City Council