



City of Philadelphia

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

BILL NO. 130416

Introduced May 16, 2013

Councilmember Tasco

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

AN ORDINANCE

Approving a Lease Agreement between Philadelphia Gas Works by Philadelphia Facilities Management Corporation, solely in its capacity as operator and manager of the City-owned Philadelphia Gas Works, and Germantown Realty Investment Group, LP for certain premises located at 212-214 W. Cheltenham Avenue.

WHEREAS, The Philadelphia Gas Works by Philadelphia Facilities Management Corporation ("PFMC") desires to enter into a lease agreement ("Lease Agreement") whereby PFMC, in its capacity as operator and manager of the City-owned Philadelphia Gas Works, under and pursuant to an agreement with the City of Philadelphia dated December 29, 1972, as amended, will rent from Germantown Realty Investment Group, LP, certain premises located at 212-214 W. Cheltenham Avenue for a four year term; and

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

WHEREAS, The Philadelphia Gas Commission at a public meeting duly held on May 14, 2013, approved the proposed Lease Agreement between Philadelphia Gas Works by Philadelphia Facilities Management Corporation and Germantown Realty Investment Group, LP, in the revised form attached hereto as Exhibit "A", under certain terms and conditions and favorably recommended approval of the transaction to City Council; now, therefore

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

City of Philadelphia

BILL NO. 130416 continued

SECTION 1. Pursuant to Section VIII(3) of the Agreement dated December 29, 1972, as amended, between the City of Philadelphia and the Philadelphia Facilities Management Corporation, the City Council does hereby approve the Lease Agreement concerning 212-214 W. Cheltenham Avenue, set forth in Exhibit "A" attached hereto and made a part hereof, between Philadelphia Gas Works by Philadelphia Facilities Management Corporation, and Germantown Realty Investment Group, LP.

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

City of Philadelphia

BILL NO. 130416 continued

EXHIBIT A

OFFICE LEASE

Burgess Center - Approximately 4,112 square feet
Demised Premises

GERMANTOWN REALTY INVESTMENT GROUP, LP
Landlord

PHILADELPHIA GAS WORKS
Tenant

Date of Lease:

RETAIL LEASE

THIS RETAIL LEASE ("**Lease**") is made this ____ day of _____ 2013, between GERMANTOWN REALTY INVESTMENT GROUP, LP, a Pennsylvania limited partnership with an address at 101 N. Providence Road, Wallingford, Pennsylvania 19086 ("**Landlord**"), and PHILADELPHIA GAS WORKS ("PGW"), by PHILADELPHIA FACILITIES MANAGEMENT CORPORATION ("PFMC"), a non-profit Pennsylvania corporation, solely in its capacity as operator and manager of the municipally owned PHILADELPHIA GAS WORKS, under and pursuant to an Agreement with the City of Philadelphia dated December 29, 1972, as amended, with an address of Burgess Plaza 210-220 Chelton and Wayne Avenues, Philadelphia, PA 19144 ("**Tenant**").

Background

A. Landlord is the owner of the shopping center known as The Burgess Center, located on W. Chelton Avenue in Philadelphia, Pennsylvania, as more particularly depicted on **Exhibit "A-1"** attached hereto and made a part hereof and described on **Exhibit "B"** attached hereto and made a part hereof (the "**Shopping Center**").

B. Landlord wishes to lease to Tenant, and Tenant wishes to lease from Landlord, a portion of the Shopping Center upon the terms and conditions as herein set forth.

FUNDAMENTAL LEASE PROVISIONS

(a) "**Term**": Four (4) years commencing on the Commencement Date and ending at 11:59 PM ET on the day preceding the fourth (4th) anniversary of the Commencement Date (the "**Expiration Date**"). The term "**Lease Year**" shall mean each consecutive period of twelve (12) months during the Term, with the first Lease Year commencing on the Commencement Date and ending on the last day of the month in which the one (1) year anniversary of the Commencement Date occurs, provided that if the Commencement Date is the first day of the month, the first Lease Year shall commence on the Commencement Date and expire on the day immediately preceding the first anniversary of the Commencement Date. Notwithstanding the foregoing, and so long as Tenant is not in material default under the terms of this Lease, Tenant shall have the right to terminate this Lease on or after the second anniversary of the Commencement Date, without cost or penalty. Tenant shall provide written notice (the "Termination Notice") to the Landlord indicating termination of this Lease and that the premise will be vacated in one hundred eighty (180) days from the date of the Termination Notice.

(b) "**Demised Premises**" or "**Premises**": approximately 4,112 square feet of space ("**Tenant's GLA**") in the Shopping Center, which Demised Premises is on the Site Plan attached hereto as **Exhibit "A-2"** (the "**Site Plan**").

(c) "**Landlord's GLA**": the square footage of the tenant buildings constructed from time to time in the Shopping Center.

(d) "**Tenant's Proportionate Share**": Tenant's GLA divided by Landlord's GLA.

(e) **“Commencement Date”**: Upon execution of this Lease.

(f) **“Notice Addresses”**:

Landlord: Germantown Realty Investment Group, LP
805 Third Avenue, 10th Floor
New York, NY 10022
Attention: Lenard Thylan

with a copy to:

Craig L. Finger, Esquire
Fox Rothschild LLP
2000 Market Street, 20th Floor
Philadelphia, PA 19103

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

with a copy to:

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

(g) **“Permitted Use”**: General retail and office space as permitted under applicable zoning code, and for no other use. In no event shall Tenant use the Demised Premises in violation of any of the exclusives granted to other tenants set forth on **Exhibit “E”** attached hereto, or the other restrictions set forth on **Exhibit “E”** attached hereto.

(h) **“Trade Name”**: Philadelphia Gas Works

(i) **“Annual Base Rent”**: The initial Annual Base Rent is \$ 65,792 (\$16/sq. ft.) and increases by three (3%) annually each Lease Year during the Term.

(j) **“Brokers”**: None.

(k) **“Security Deposit”**: None.

(l) **“Base Year”**: Calendar Year 2013.

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, the parties, intending to be legally bound, hereby agree as follows:

1. **Lease and Description of Demised Premises.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Demised Premises, for the Term and subject to the covenants and conditions set forth herein. The Premises shall be subject to, and Landlord reserves to the use of Landlord and all tenants and occupants of the Shopping Center, and to all utility suppliers, a right of way and easement through and within all exterior walls, party walls, ceilings (above the level of the lower face of the finished drop-ceiling), and other areas outside of the area of space enclosed by the interior surfaces of the walls, ceiling and floor slab enclosing the Premises (but also including interior columns, pipes, chases, conduits), for the installation, operation, use, maintenance, repair and replacement of ducts, pipes, conduits, wires and other facilities, devices and equipment providing utility services to, and for the structural support of, other portions of the Shopping Center. The Tenant's GLA shall be measured from the outside face of exterior walls and the centerline of demising walls, without deduction for columns, shafts, mechanical rooms, stairs or interior construction equipment. Landlord and Tenant stipulate that the Tenant's GLA is 4,112 square feet.

2. **Term of Lease.** The term of this Lease shall be for the Term set forth in **Paragraph (a)** of the Fundamental Lease Provisions, commencing on the Commencement Date and expiring on the Expiration Date. Upon request of Landlord, Landlord and Tenant shall execute any agreement setting forth the Commencement Date and Expiration Date.

3. **Alterations and Improvements.**

(a) **Alterations.** Tenant shall not make any alteration of or addition to the Demised Premises without the prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed, except for interior, nonstructural alterations of a decorative nature that do not exceed more than \$25,000 in the aggregate. All alterations performed in the Demised Premises by Tenant, whether or not requiring Landlord's consent, shall be performed: (i) at Tenant's sole cost and expense, (ii) by contractors and subcontractors approved in advance in writing by Landlord, which approval shall not be unreasonably withheld or delayed, and (iii) in a good and workmanlike manner and in accordance with all applicable laws and ordinances. For any alterations requiring Landlord's approval, Tenant shall first submit to Landlord, for Landlord's approval, detailed drawings, plans and specifications depicting such work. Tenant may not commence any such work unless Landlord has approved the plans therefor. All alterations to the Demised Premises by Tenant shall be the property of Tenant until the expiration or earlier termination of this Lease. Upon the expiration or earlier termination of this Lease, all such alterations shall remain at the Demised Premises and become the property of Landlord without payment by Landlord therefore, unless such alterations may be removed by Tenant without damage to the Premises. Notwithstanding the foregoing, Landlord, at Landlord's option, shall have the right to require that any or all of such alterations be removed upon the expiration or earlier termination of this Lease by providing written notice thereof to Tenant, in which event Tenant, at Tenant's sole cost and expense, shall remove such alterations and repair any resulting damage.

(b) Signs. Tenant shall have the right, at its sole cost and expense, to erect building signage in accordance with applicable law, so long as Tenant obtains all permits and approvals therefor. Such building signage shall be subject to Landlord's prior written approval, which approval shall not be unreasonably withheld or delayed. Tenant shall not use any advertising or other media objectionable to Landlord in landlord's reasonable judgment and/or local codes governing same, such as loudspeakers, phonographs, or radio broadcasts that can be heard outside the premises.

(c) Mechanic's Lien. Tenant agrees not to suffer or permit any mechanic's lien to be filed against the Demised Premises or any other portion of the Shopping Center by reason of any work, labor, services or materials performed at or furnished to the Demised Premises for Tenant, or for anyone holding the Demised Premises through or under Tenant. If any such mechanic's lien shall at any time be filed, Tenant shall forthwith cause the same to be discharged of record by payment, bond, order of a court of competent jurisdiction, or otherwise, but Tenant shall have the right to contest any and all such liens, provided security satisfactory to Landlord is deposited with Landlord. If Tenant shall fail to take reasonable action to cause such lien to be discharged within thirty (30) days after being notified of the filing thereof, then, in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the same by paying the amount claimed to be due or by bonding or other proceeding deemed appropriate by Landlord, and the amount so paid by Landlord and/or all costs and expenses, including reasonable attorneys' fees and court costs, incurred by Landlord in procuring the discharge of such lien, shall be deemed to be additional rent and, together with interest thereon at the Default Rate, shall be due and payable by Tenant to Landlord on the first day of the next following month. Nothing in this Lease contained shall be construed as a consent on the part of Landlord to subject Landlord's estate in the Demised Premises to any lien or liability.

4. Rent.

(a) Annual Base Rent. Tenant shall pay to Landlord during the Term Annual Base Rent in the amounts set forth in Paragraph (i) of the Fundamental Lease Provisions, payable in equal monthly installments in advance, without notice, demand, counterclaim or set-off. Annual Base Rent shall be payable on the first day of each month of the Term, commencing on the Commencement Date. The first monthly installment of Annual Base Rent shall be due upon the execution of this Lease by Tenant. If the Commencement Date shall be other than the first day of a month, the Annual Base Rent shall be apportioned for such month based on the number of days in such month, and any excess payment on the date of execution of this Lease shall be credited against the next monthly installment falling due.

(b) Common Area Maintenance Costs. In addition to Annual Base Rent, Tenant shall pay to Landlord in each year, as additional rent, an amount equal to Tenant's Proportionate Share multiplied by the annual total cost incurred by Landlord in operating, maintaining, repairing and replacing the Common Areas, as defined below, (the "CAM Costs") to the extent the Tenant's proportionate allocation of CAM Costs exceed the Base Year costs (such annual amount is hereinafter referred to as the "CAM Payment"). The CAM Costs are estimated at \$2.50 sq. ft. annually or \$10,280 total, and shall not exceed \$3.50 sq. ft. annually during the term of this agreement without written justification to and acceptance by PGW. The CAM Costs shall include, without limitation: all costs and expenses of every kind and nature

paid or incurred by Landlord during the Term in operating, equipping, policing (if and to the extent provided by Landlord) protecting, repairing, replacing, maintaining, and insuring the Shopping Center and the Common Areas; the cost of premiums for bodily injury, public liability and property damage insurance; water supply charges; repairs, restriping, patching, paving and repaving the parking area, service area, planted areas and other Common Areas, parking lot lights and signs, and appurtenant structures, supply pipes for utilities, drainage pipes, and access roads in good working order, repair and condition; the costs of keeping the parking area, service area and access roads clean and free and clear of snow, ice and debris, clearly striped and properly lighted; capital expenditures and equipment rentals relating to the Common Areas; utility services for the Common Areas; and an amount equal to fifteen percent (15%) of all of the foregoing costs to cover Landlord's administrative and overhead costs. Tenant shall pay the CAM Payment in equal monthly installments with each installment of Annual Base Rent in an amount equal to 1/12th of Landlord's estimate of the CAM Payment for the current year. Within a reasonable time after the end of each year, Landlord shall deliver a statement to Tenant setting forth the actual CAM Costs for the previous year and the actual CAM Payment due from Tenant. If Tenant has overpaid the CAM Payment for such year, Tenant shall receive a credit against the next CAM Payments falling due, and if Tenant has underpaid the CAM Payment, Tenant shall pay any amounts due within ten (10) days after receipt of Landlord's statement. If any tenant of any part of the Shopping Center, in lieu of paying a share of the CAM Costs shall undertake to maintain any designated part of the Common Areas of the Shopping Center, the leasable area of such tenant's leased premises shall not be included in the denominator of Tenant's Proportionate Share for the applicable purposes of this Section.

(c) Taxes. Landlord shall pay all real property taxes and special assessments, whether foreseen or unforeseen, special or extraordinary (collectively "Taxes") assessed or imposed upon the Demised Premises, the Shopping Center and the land on which the Shopping Center is located; provided, however, that Tenant shall pay, as additional rent, an amount equal to Tenant's Proportionate Share, multiplied by the Taxes for the current year (the "Tax Payment"). The Tax Payment is estimated to be \$1 per sq. ft. annually or \$4112 total. If any tenant's or occupant's premises in the Shopping Center is separately assessed for Taxes, Landlord may reduce the denominator of the fraction in determining Tenant's Proportionate Share of Taxes by the leasable area of such separately assessed premises. Tenant shall pay the Tax Payment to Landlord, at Landlord's option, in a lump sum within ten (10) days after presentation to Tenant of a bill therefor, or in equal monthly installments with Tenant's monthly installment of Annual Base Rent in an amount equal to 1/12th of Landlord's estimate of the Tax Payment for the following year. In such latter event, upon receipt of a tax bill for the current year, Landlord shall deliver a copy of the same to Tenant, and Tenant shall pay any underpayments to Landlord, or if Tenant has overpaid the actual Tax Payment, Tenant shall receive a credit against the next Tax Payments falling due. "Taxes" shall include Landlord's costs in appealing or contesting Taxes. Taxes shall also include the Philadelphia Use & Occupancy Tax, net profits tax and commercial activity tax payable by Landlord, or by Landlord on behalf of Tenant, and any replacements or additions thereto (the "Philadelphia Taxes"). Tenant shall pay such Philadelphia Taxes to Landlord within ten (10) days after delivery of an invoice to Tenant. In addition to the payments provided for in the immediately preceding sentence, if, prior to the Commencement Date, Landlord shall have prepaid all or a portion of the Taxes apportionable to the Term, the Tax Payment shall include and Tenant shall reimburse to

Landlord Tenant's share of such Taxes (calculated in accordance with the provisions of **Section 4(c)**) on or before the Commencement Date.

Tenant shall not be chargeable with, nor be obligated to pay, any income (other than gross receipts or similar taxes imposed or levied upon, assessed against or measured by any sums payable by Tenant under this Lease as provided above in this **Section 4(c)**), profit, inheritance, estate, succession, gift, franchise or transfer taxes which are or may be imposed upon Landlord, its successors or assigns, by whatsoever authority imposing same or howsoever designated.

Should any governmental taxing authority acting under any present or future law, ordinance or regulation, levy, assess or impose a tax, excise and/or assessment (other than a tax on net income as defined by the Internal Revenue Service) upon or against or any way related to the land and buildings comprising the Shopping Center, or upon this Lease, either by way of substitution for or in addition to any existing tax on land and buildings or otherwise, such tax shall be included in the term "**Taxes**" and shall be subject to reimbursement by Tenant as provided above.

(d) **Additional Rent.** In addition to Annual Base Rent, Tenant shall pay, as additional rent (herein sometimes collectively called "**Additional Rent**"), all other amounts, sums of money or charges of whatsoever nature required to be paid by Tenant to Landlord pursuant to this Lease, whether or not the same is designated as "**Additional Rent**". Rent shall be payable at Landlord's address as set forth in **Paragraph (f)** of the Fundamental Lease Provisions, or to such other address as Landlord may designate from time to time upon written notice to Tenant.

5. **Use of Demised Premises.** Tenant shall use and occupy the Demised Premises for the Permitted Use, and no other use. Tenant shall conduct its business only under the Trade Name, or such other trade name as Landlord may approve, which approval shall not be unreasonably withheld or delayed.

6. **Maintenance and Condition of Demised Premises; Repairs; Common Area Maintenance.**

(a) **Tenant's Property; Surrender.** Tenant may not remove from the Premises any leasehold improvements (as distinguished from trade fixtures and apparatus) installed in the Premises at any time, whether by or on behalf of Tenant or by or on behalf of Landlord, unless such removal is consented to in advance by Landlord, which consent shall not be unreasonably withheld or delayed. At the expiration or sooner termination of this Lease, all such leasehold improvements shall be deemed to be part of the Premises, shall not be removed by Tenant when it vacates the Premises, and title thereto shall vest solely in Landlord without payment of any nature to Tenant. At the expiration of the Term, Tenant shall remove all of its furniture, movable trade fixtures and equipment and shall deliver the Demised Premises to Landlord in as good condition and repair as existing upon the Commencement Date, normal wear and tear only excepted. Tenant shall promptly repair and replace any damage to the Demised Premises or the Shopping Center as a result of the removal of Tenant's property from the Demises Premises.

(b) Landlord's Repairs. Subject to Tenant's reimbursement obligations as provided herein, Landlord shall make all repairs to the Demised Premises of a structural nature, which shall be limited to the foundation, exterior walls (including windows and doors), roof and cement floors, in addition to all systems which are fixtures, including lighting, plumbing, sprinkler and utility lines, and Landlord shall operate and promptly repair and maintain the Common Areas of the Shopping Center. The "Common Areas" shall mean all curbs, sidewalks, elevators, driveways, parking facilities, exterior utility service lines and all other areas and facilities used or provided for the general benefit of all tenants and occupants of the Shopping Center, whether located within or outside the boundaries of the Shopping Center. In no event shall Landlord be liable for any such repairs unless Tenant shall have notified Landlord of the need for any repairs in the Demised Premises for which Landlord is responsible hereunder. Landlord's obligations under this Lease shall not include: (i) any repair, maintenance or replacement of any defective workmanship or material performed or installed as a part of Tenant's Work, or subsequently performed by anyone other than Landlord, its employees, agents or contractors; (ii) any repair, maintenance or replacement required as a result of the negligence, misconduct or abuse of Tenant or any assignee, subtenant or other occupant of the Premises by, through or under Tenant, or their respective employees, agents or contractors; (iii) patching and other maintenance of the roof(s) of the buildings enclosing the Premises to the extent necessitated by the placement of any of Tenant's equipment of fixtures or by any other negligent acts of Tenant; or (iv) any improvements, upgrades or modifications required to be made to any foundations, exterior and interior load-bearing walls, roofs and/or structural members of the building constructed on the Premises required or desirable in connection with any improvements or betterments which Tenant constructs or intends to construct on or to the Premises.

(c) HVAC. Landlord, at Landlord's cost, shall repair and maintain the HVAC system serving the Demised Premises.

(d) Tenant's Repairs. With the exception of Landlord's obligations in subsection (b) and (c) above, Tenant shall make all repairs, replacements, alterations and improvements in and to the Demised Premises as are necessary to keep and maintain the Demised Premises, including all utility systems therein, in good working order, and in a clean and neat condition, in compliance with all applicable laws. Tenant's obligations shall include, without limitation, maintaining, Tenant's signs, fixtures and personal property, Tenant will not overload the electrical wiring or other systems serving the Premises or within the Premises, and will install at its expense, but only after obtaining Landlord's written approval, which approval shall not be unreasonably withheld or delayed, any additional electrical wiring or other items which may be required in connection with Tenant's apparatus. Tenant shall not install any exterior gates, barriers or other comparable exterior security device without Landlord's prior approval.

(e) Landlord's Control. Notwithstanding anything herein to the contrary, and provided Landlord does not impair Tenant's use or quiet enjoyment of the Demised Premises, including, without limitation, by restricting or diminishing public access to the Demised Premises, Landlord shall have the right from time to time (i) to change the location or character of and to make alterations of or additions to the Common Areas, to erect or demolish buildings or other improvements in the Common Areas and to repair and reconstruct the Common Areas, (ii) to erect or permit to be erected kiosks, pushcarts and other displays in the Common Areas,

(iii) to make changes, alterations and improvements to the Shopping Center, to add floors or additional space to the Shopping Center and to otherwise deal with the Shopping Center as Landlord deems appropriate or necessary, and (iv) to grant easements in or on the Common Areas and to subject the Common Areas or the Shopping Center to declarations, restrictions or other title matters.

(f) No Liability. Neither Landlord nor any other party operating, maintaining, managing or supervising said Common Areas or the Shopping Center, nor any of their respective agents or employees, shall be liable to Tenant or any of Tenant's employees, agents, customers or invitees or anyone claiming through or under Tenant, for any damages, injuries, losses, expenses, claims or causes of action arising out of any interruption or discontinuance at any time for any reason in the furnishing of any services to the Common Areas or Shopping Center, nor shall any such interruption or discontinuance be deemed an eviction or disturbance of Tenant's use or possession of the Demised Premises or any part thereof, nor shall any such interruption or discontinuance relieve Tenant from full performance of Tenant's obligations under this Lease.

(g) Employee Parking. In addition to the foregoing, Landlord shall designate an area or areas within the Common Areas, or reasonably adjacent thereto, for the purpose of parking ten (10) automobiles and/or other light vehicles for passenger transportation of Tenant, its subtenants, licensees, concessionaires, agents, representatives and employees. Tenant, its subtenants, licensees, concessionaires, agents, representatives and employees shall park said automobiles and vehicles only in the area or areas so designated by Landlord, which areas Landlord may change and relocate from time to time. Tenant shall within five (5) days after written notice from Landlord furnish to Landlord the state license numbers and descriptions of said automobiles and vehicles in order to facilitate the enforcement of the provisions of this Section 6(g). Tenant agrees that it shall, upon written demand from Landlord, pay to Landlord the sum of fifteen dollars (\$15.00) per day for each automobile or other vehicle parked by Tenant, its subtenants, licensees, concessionaires, agents, representatives and employees, outside such area or areas so designated by Landlord; provided, however, that any such demands for payment by Landlord must be given to Tenant within sixty (60) days after the particular occurrence or occurrences with respect to which payment is so demanded. Tenant hereby authorizes Landlord to tow away at Tenant's reasonable expense from the Common Areas any car or cars belonging to Tenant or Tenant's employees, or to attach violation stickers or notices to such cars that are parked in unauthorized spaces, without any liability to Landlord whatsoever.

(h) Compliance with Laws. Tenant agrees at its own expense to comply with (and to make all alterations, improvements and changes required, with respect to the Premises, by) all governmental requirements (including without limitation the Americans with Disabilities Act and comparable legal requirements), as well as the recommendations and requirements, with respect to the Premises, or its use or occupancy, of the insurance underwriters or insurance rating bureau or any similar public or private body and any governmental authority having jurisdiction with respect to the use or occupancy of the Shopping Center, including, but not limited to, installation of fire extinguishers or automatic detection and/or suppression systems, any changes, modifications or alterations in the detection and/or suppression systems or additional detectors and/or sprinkler heads or the location of partitions, trade fixtures, or other contents of the Premises.

7. **Utilities.** Landlord shall, subject to events beyond its reasonable control, furnish or cause to be furnished to Tenant for use in the Demised Premises the utility services, including gas (if available), electricity, domestic water and sanitary sewer. All such utility services are collectively hereinafter referred to as "**Utilities**". The costs of all Utilities furnished by Landlord or Landlord's agent shall not exceed the rate that Tenant would be charged if Tenant contracted directly with the utility company providing such service. Tenant shall apply directly to the utility provider to obtain service for the Demised Premises. Tenant shall pay all tap-in, connection, EDU and other similar fees and charges necessary to establish utility service for the Demised Premises.

Throughout the Term, Tenant agrees to pay to Landlord, or to such company, firm or individual as may be providing Utilities, all charges for any Utilities that are separately metered or submetered to the Demised Premises pursuant to and in accordance with the rates as established by Landlord or such company, firm or individual as may be providing such Utilities. Such payments shall commence upon the earlier of the Commencement Date or the date on which Tenant requests that Utilities be furnished to Tenant. Landlord may equitably allocate the costs or fees payable by Tenant for any Utilities provided to the Demised Premises that are not separately metered or sub-metered.

Neither Landlord, nor any company, firm or individual furnishing Utilities, nor any of their respective agents, beneficiaries or employees, shall be liable to Tenant or any of Tenant's employees, agents, customers or invitees or anyone claiming through or under Tenant, for any damages, injuries, losses, expenses, claims or causes of action, because of any interruption or discontinuance at any time for any reason not attributable to Landlord in the furnishing of any of said Utilities; nor shall any such interruption or discontinuance not attributable to Landlord be deemed an eviction or disturbance of Tenant's use or possession of the Demised Premises or any part thereof; nor shall any such interruption or discontinuance not attributable to Landlord relieve Tenant from full performance of Tenant's obligations under this Lease.

8. **Liability.** Tenant agrees that Landlord shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Tenant or any other person during the Term from any cause whatsoever (excepting only Landlord's negligence or willful misconduct), including without limitation bursting pipes and smoke, the construction, use, occupancy or enjoyment of the Premises by Tenant or any person therein or holding under Tenant, or the happening upon or about the Premises of any event; and Tenant for the purposes of this **Section 8** shall be deemed to be in exclusive control of the Premises during the Term.

9. **Insurance by Tenant.**

(a) **Coverages.** Tenant shall keep and maintain at all times during the Term, the following insurance coverages:

(1) commercial general liability insurance, insuring Landlord and Tenant, as their interests may appear, against all claims, demands, or actions for injury or death and property damage, arising from, related to, or connected with the conduct and operation of Tenant's business in the Demised Premises, on a "per occurrence" basis, with combined single

limits of not less than \$3,000,000. Landlord shall have the right to direct Tenant to increase such amounts whenever it considers them inadequate. Such liability insurance policy shall contain coverage for Tenant's contractual liability under the hold harmless clause set forth in **Section 8**.

(2) all-risk casualty insurance covering Tenant's fixtures, floor coverings and equipment in the Demised Premises for the full replacement value thereof. Such insurance, or a separate policy of insurance, shall insure Tenant's HVAC system for not less than the full replacement value thereof.

(3) workers' compensation insurance in amounts required by applicable laws.

(4) such other insurance as Landlord or its lender may reasonably require.

(b) **Requirements**. Tenant shall self-insure the above coverages.

10. **Waiver of Subrogation Rights**. Landlord and Tenant hereby waive any rights each may have against the other on account of any loss or damage occasioned to Landlord or Tenant, as the case may be, their respective property, the Premises, its contents or to the other portions of the Shopping Center, arising from any risk covered by fire and extended coverage insurance, and to the extent of recovery under valid and collectible policies of such insurance, provided that such waiver does not invalidate such policies or prohibit recovery thereunder. The parties hereto each, on behalf of their respective insurance companies insuring the property of either Landlord or Tenant against any such loss, waive any right of subrogation that such insurers may have against Landlord or Tenant, as the case may be.

11. **Hazardous Materials**.

(a) Tenant shall not engage in or permit any party to engage in the transportation, storage, placement, handling, treatment, discharge, generation, production, or disposal (collectively "**Treatment**") of any hazardous waste, hazardous substance, toxic waste, waste, waste products, radioactive waste, polychlorinated biphenyls, asbestos, or any other substance of any kind which is regulated by any law, statute, ordinance, rule, or regulation (collectively "**Waste**"), on the Demised Premises or which affect the Demised Premises or the Shopping Center. Tenant further covenants and warrants that Tenant, its agents, licensees, employees, assignees, sublessees and contractors, will at all times comply with and conform to all laws, statutes, ordinances, rules, regulations, notices, and orders now or hereafter in force (collectively "**Directives**") of all governmental and regulatory authorities, or of any Board of Fire Underwriters, or any insurance organization, association, or company, with respect to the Treatment of any Waste on or which affects the Demised Premises.

(b) Immediately upon receipt of any notice of any kind or nature respecting any Treatment of Waste or any spill, contamination, discharge, leakage, release or escape of Waste, whether sudden or gradual, accidental or anticipated, or of any other nature (hereinafter "**Spill**"), in or affecting the Demised Premises, from any party, the receiving party shall deliver to the other a true, correct and complete copy of any written notice or a true, correct, and complete report of any non-written notice.

(c) Notwithstanding anything in this Lease, the representations and undertakings of Tenant in this **Section 11** shall survive the expiration or termination of this Lease regardless of the means of such expiration or termination for so long as Landlord has any interest of any kind in the Demised Premises whether as a landlord, tenant, mortgagee or otherwise.

12. **Destruction.** If by reason of a fire or other casualty affecting the Demised Premises or the Shopping Center, (a) the Demised Premises is rendered wholly untenable, (b) the Demised Premises shall be damaged to the extent of twenty percent (20%) or more of the then current cost of replacement thereof, (c) the Demised Premises or Shopping Center is damaged as a result of a risk which is not covered by Landlord's insurance, (d) the Demised Premises or the Shopping Center is damaged in whole or in part during the last two (2) years of the Term, (e) the Shopping Center (whether the Demised Premises is damaged or not) is damaged to the extent of twenty-five percent (25%) or more of the then current replacement cost, (f) any or all of the Shopping Center or Common Areas of the Shopping Center are damaged (whether or not the Demised Premises is damaged) to such an extent the Shopping Center cannot, in the sole judgment of Landlord, be operated as an integral unit, or (g) any mortgagee of the Demised Premises shall retain the insurance proceeds for application to reduction of any obligation of Landlord to such mortgagee, then in any such event, (A) Landlord may elect to either (i) repair or rebuild the Demised Premises or the Shopping Center or (ii) terminate this Lease upon giving notice of such election to Tenant within sixty (60) days after such event, and thereupon this Lease shall expire, and Tenant shall vacate and surrender the Demised Premises to Landlord or (B) Tenant may elect to terminate this Lease upon giving notice of such election to Landlord within sixty (60) days after such event, and thereupon this Lease shall expire, and Tenant shall vacate and surrender the Demised Premises to Landlord. Tenant's liability for Rent upon termination of this Lease shall cease as of the day such event occurred causing termination of this Lease. In the event Landlord elects to repair the damage insurable under Landlord's policies, and Tenant elects not to terminate this Lease, any abatement of Annual Base Rent shall end five (5) days after notice by Landlord to Tenant that the Demised Premises have been repaired. If this Lease is not terminated as provided above, Landlord shall, after Landlord receives adequate insurance proceeds therefor, commence and complete the repair of same to the condition that existed prior to the destruction, and Annual Base Rent shall be abated proportionately as to that portion of the Demised Premises rendered untenable. Notwithstanding the foregoing, Landlord shall not be obligated to expend for such repair an amount in excess of the insurance proceeds received by Landlord as a result of such damage, and in no event shall Landlord be required to repair or replace Tenant's stock in trade, fixtures, furniture, furnishings, and equipment. Upon Landlord's substantial completion of restoration of the Demised Premises, Tenant shall promptly reinstall its furniture, fixtures and equipment and prepare the Demised Premises for occupancy pursuant to the original plans approved by Landlord, or such other plans as are approved by Landlord. Upon completion of such work, Tenant shall reopen for business for the Permitted Use. Nothing in this paragraph shall be construed to abate additional rent.

13. **Condemnation.**

(a) **Total.** If all or substantially all of the Demised Premises shall be acquired or taken by eminent domain for any public or quasi public use or purpose (a "**Taking**"), this

Lease and the term herein shall cease and terminate as of the date of title vesting in such proceeding.

(b) Partial. If less than all or substantially all of the Demised Premises shall be subject to a Taking as aforesaid, and such partial Taking shall render that portion not so taken unsuitable for the business of Tenant, then this Lease and the term hereof shall cease and terminate as aforesaid. If such partial Taking is not extensive enough to render the Demised Premises unsuitable for the business of Tenant, in the reasonable opinion of Landlord, this Lease shall continue in effect except that Annual Base Rent shall be reduced in the same proportion that the floor area of the Demised Premises taken bears to the original gross leasable area leased, and Landlord shall, upon receipt of the award in condemnation, make all necessary repairs or alterations to the Shopping Center and Demised Premises so as to constitute the portion of the Demised Premises and Shopping Center not taken a complete architectural unit; provided that in no event shall Landlord be required to spend for such work an amount in excess of the net amount received by Landlord as damages for the part of the Demised Premises so taken.

(c) Additional Termination Rights. If (i) more than twenty percent (20%) of the floor area of the Shopping Center is subject to a Taking, (ii) any or all of the Common Areas are taken (whether or not any portion of the Demised Premises is taken) to such an extent that the Shopping Center cannot reasonably be operated as an integrated Shopping Center, or (iii) all or any part of the Demised Premises or Shopping Center is taken in the last two (2) years of the Term, Landlord may, by written notice to Tenant, terminate this Lease, such termination to be effective as of the date title to the area so taken vests in the condemning authority.

(d) Refund of Rent. If this Lease is terminated as provided in this Section, the Rent shall be paid up to the day that possession is so taken by public authority and Landlord shall make an equitable refund of any Rent paid by Tenant in advance.

(e) Award. Tenant shall not be entitled to and expressly waives all claim to any condemnation award for any Taking, whether whole or partial, and whether for diminution in value of the leasehold or to the fee, although Tenant shall have the right, to the extent that the same shall not reduce Landlord's award, to claim from the condemnation, but not from Landlord, such compensation as may be recoverable by Tenant in its own right for damage to Tenant's fixtures, moving and business dislocation and other expenses, if such claim can be made separate and apart from any award to Landlord and without prejudice to Landlord's award.

14. Defaults by Tenant. All rights and remedies of Landlord herein enumerated shall be cumulative, and none shall exclude any other right or remedy allowed by law, including the right to retain Tenant's property. It is agreed that the occurrence of any of the following shall constitute an "Event of Default" hereunder:

(a) Tenant shall fail, neglect or refuse to pay any installment of Rent or to pay any other monies agreed by it to be paid, within five (5) business days after the date when due; or

(b) A voluntary or involuntary petition or similar pleading under any section of any bankruptcy act shall be filed by or against Tenant, or any voluntary or involuntary proceeding in any court or tribunal shall be instituted to declare Tenant insolvent or unable to

pay Tenant's debts, and the same shall not be dismissed or discharged within thirty (30) days after filing; or

(c) Tenant shall fail, neglect, or refuse to keep and perform any of the other material covenants, conditions, stipulations, or agreements herein contained and covenanted and agreed to be kept and performed by it and any such default shall continue for a period of more than fifteen (15) days after notice thereof in writing given to Tenant by Landlord; provided, however, that if the cause for giving such notice involves the making of repairs or other matters reasonably requiring a longer period of time than the period of such notice, Tenant shall be deemed to have complied with such notice so long as it has commenced with said matter within the period set forth in the notice and is diligently prosecuting compliance with said notice, or has taken proper steps or proceedings, under the circumstances to prevent the seizure, destruction, alteration, or other interference with said Demised Premises by reason of non-compliance with the requirements of any law or ordinance or with the rules, regulations or directions of any governmental authority as the case may be; provided that in any event, if such default is not cured within sixty (60) days after its occurrence, an Event of Default shall exist; or

(d) Tenant shall vacate or abandon the Demised Premises without authority hereunder; or

(e) Tenant shall assign this Lease or sublease the Demised Premises in violation of Section 23 hereof.

15. **Remedies of Landlord.** Upon the occurrence of an Event of Default hereunder, Landlord may exercise any or all of the following remedies in such order or priority as Landlord shall determine in its sole discretion:

(a) Annual Base Rent for the entire unexpired balance of the term of this Lease, and all other charges, payments, costs and expenses herein agreed to be paid by Tenant hereunder, including, without limitation, all future Additional Rent, as reasonably estimated by Landlord, shall be taken to be due and payable and in arrears as if by the terms and provisions of this Lease, the whole balance of such amounts were on that date payable in advance, together with all reasonable collection costs and officer's commission, watchman's wages, any amounts authorized by law, and reasonable attorneys' fees incurred or to be incurred by Landlord. In addition, Tenant shall be liable for any and all installments of Annual Base Rent and additional rent already due and payable and in arrears.

(b) Collect and receive from any assignee or subtenant the rents or other charges reserved herein as rent due by such assignee or sublessee and apply the same to the Rent due hereunder.

(c) Terminate this Lease without any right on the part of Tenant to redeem or reinstate this Lease by payment of any sum due or by other performance of any condition, term, or covenant broken.

(d) Lease the Demised Premises or any part or parts thereof to any person or persons as Landlord in its sole discretion, decides, and Tenant shall be liable for any loss of Rent for the balance of the then current Term.

(e) **POSSESSION: CONFESSION OF JUDGMENT.** FOR THE PURPOSE OF OBTAINING POSSESSION OF THE DEMISED PREMISES, UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, TENANT HEREBY AUTHORIZES AND EMPOWERS THE PROTHONOTARY OR ANY ATTORNEY OF ANY COURT OF RECORD IN THE COMMONWEALTH OF PENNSYLVANIA OR ELSEWHERE, AS ATTORNEY FOR TENANT AND ALL PERSONS CLAIMING UNDER OR THROUGH TENANT, TO APPEAR FOR AND CONFESS JUDGMENT AGAINST TENANT FOR POSSESSION OF THE DEMISED PREMISES, AND AGAINST ALL PERSONS CLAIMING UNDER OR THROUGH TENANT, IN FAVOR OF LANDLORD, FOR RECOVERY BY LANDLORD OF POSSESSION THEREOF, FOR WHICH THIS AGREEMENT OR A COPY HEREOF VERIFIED BY AFFIDAVIT, SHALL BE A SUFFICIENT WARRANT; AND THEREUPON A WRIT OF POSSESSION MAY IMMEDIATELY ISSUE FOR POSSESSION OF THE DEMISED PREMISES, WITHOUT ANY PRIOR WRIT OR PROCEEDING WHATSOEVER AND WITHOUT ANY STAY OF EXECUTION. IF FOR ANY REASON AFTER SUCH ACTION HAS BEEN COMMENCED THE SAME SHALL BE TERMINATED AND THE POSSESSION OF THE DEMISED PREMISES REMAINS IN OR IS RESTORED TO TENANT, LANDLORD SHALL HAVE THE RIGHT UPON ANY SUBSEQUENT EVENT OF DEFAULT TO CONFESS JUDGMENT IN ONE OR MORE FURTHER ACTIONS IN THE MANNER AND FORM SET FORTH ABOVE TO RECOVER POSSESSION OF SAID DEMISED PREMISES FOR SUCH SUBSEQUENT EVENT OF DEFAULT. TENANT WAIVES ALL ERRORS IN CONNECTION WITH ANY SUCH CONFESSION OF JUDGMENT. NO SUCH TERMINATION OF THIS LEASE, NOR TAKING, NOR RECOVERING POSSESSION OF THE DEMISED PREMISES SHALL DEPRIVE LANDLORD OF ANY REMEDIES OR ACTION AGAINST TENANT FOR RENT OR FOR DAMAGES DUE OR TO BECOME DUE FOR THE BREACH OF ANY CONDITION OR COVENANT HEREIN CONTAINED, NOR SHALL THE BRINGING OF ANY SUCH ACTION FOR RENT, OR BREACH OF COVENANT OR CONDITION NOR THE RESORT TO ANY OTHER REMEDY HEREIN PROVIDED FOR THE RECOVERY OF RENT OR DAMAGES FOR SUCH BREACH BE CONSTRUED AS A WAIVER OF THE RIGHT TO INSIST UPON THE FORFEITURE AND TO OBTAIN POSSESSION IN THE MANNER HEREIN PROVIDED.

(f) **PAYMENT OF MONEY: CONFESSION OF JUDGMENT.** UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, TENANT IRREVOCABLY AUTHORIZES AND EMPOWERS THE PROTHONOTARY OR ANY ATTORNEY OF ANY COURT OF RECORD TO APPEAR FOR TENANT IN ANY SUCH COURT AT ANY TIME THEREAFTER TO WAIVE THE ISSUANCE AND SERVICE OF PROCESS AND TO CONFESS AND ENTER JUDGMENT AGAINST TENANT AND IN FAVOR OF LANDLORD FOR SUCH AGGREGATE AMOUNT OF RENT AND OTHER SUMS DUE TO LANDLORD AS IS UNPAID UNDER THIS LEASE TOGETHER WITH COSTS AND ATTORNEYS FEES EQUAL TO THE LESSER OF \$5,000 OR FIVE PERCENT (5%) OF SUCH UNPAID AMOUNTS. TENANT HEREBY RATIFIES AND CONFIRMS ALL THAT THE ATTORNEY MAY DO BY VIRTUE HEREOF AND WAIVES AND RELEASES ALL ERRORS WHICH MAY INTERVENE IN SUCH PROCEEDINGS. IF A COPY OF THIS LEASE SHALL BE PRODUCED IN ANY PROCEEDINGS BROUGHT UPON THE WARRANT OF ATTORNEY CONTAINED IN

THIS PARAGRAPH, SUCH COPY SHALL BE CONCLUSIVE EVIDENCE OF SUCH PROTHONOTARY'S AND/OR ATTORNEY'S AUTHORITY TO TAKE THE ACTION SPECIFIED HEREIN AND IT SHALL NOT BE NECESSARY TO PRODUCE THE ORIGINAL INSTRUMENT. THE AUTHORITY GRANTED HEREIN TO CONFESS JUDGMENT AGAINST TENANT SHALL NOT BE EXHAUSTED BY ANY EXERCISE THEREOF, BUT MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS THERE IS OCCASION THEREFOR UNTIL PAYMENT IN FULL OF ALL AMOUNTS DUE UNDER THIS LEASE.

(g) In the event that Tenant defaults in the performance of any of the terms, conditions or covenants of this Lease, and such default requires Landlord, in the exercise of its sole discretion, to engage the services of any attorney, whether or not an employee of Landlord, to enforce compliance by Tenant with the terms, conditions and covenants hereof, or to prosecute Landlord's rights in any bankruptcy proceeding, Tenant will reimburse Landlord for any and all reasonable and actual expenses incurred in its use of such attorney and in any action which said attorney may pursue. Such expenses shall include, but are not limited to: legal fees, court costs, costs of filing and serving summons and/or complaints, etc. All such attorney fees and costs incurred by Landlord shall be due and payable on demand, shall be deemed to be additional rent hereunder and shall be added to the installment of rent next accruing or to any subsequent installment of rent due and payable hereunder, at the election of Landlord.

(h) Tenant expressly waives: (i) all rights under Landlord and Tenant Act of 1951, and all supplements and amendments thereto; and (ii) the right to three (3) months' or fifteen (15) or thirty (30) days' notice required under certain circumstances by Landlord and Tenant Act of 1951, Tenant hereby agreeing that the respective notice periods provided for in this Lease shall be sufficient in either or any such case.

16. **Landlord's Right to Cure Defaults.** Landlord may, but shall not be obligated to, cure, at any time, with notice, any default by Tenant under this Lease; and whenever Landlord so elects, all costs and expenses thereby incurred by Landlord, including, without limitation, reasonable attorneys' fees and court costs, shall be due and payable as additional rent upon demand by Landlord.

17. **Effect of Waivers of Default.** No consent or waiver, express or implied, by Landlord to or of any breach of any covenant, condition or duty of Tenant shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty. Failure of Landlord to insist upon the strict performance of any provisions of this Lease or to exercise any option or any rules and regulations herein contained shall not be construed as a waiver for the future of any such provision, rule or option. No consent or waiver, express or implied, by Tenant to or of any breach of any covenant, condition or duty of Landlord shall be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty. Failure of Tenant to insist upon the strict performance of any provisions of this Lease or to exercise any option or any rules and regulations herein contained shall not be construed as a waiver for the future of any such provision, rule or option. The receipt by Landlord of Rent with knowledge of the breach of any provision of this Lease shall not be deemed a waiver of such breach. No provision of this Lease shall be deemed to have been waived unless such waiver be in writing signed by the waiving party. No waiver by Landlord in

respect to one tenant shall constitute a waiver in favor or any other tenant in the Shopping Center.

18. **Security Deposit.** No security deposit by Tenant is required.

19. **Subordination.** Tenant agrees that the rights and interest of Tenant under this Lease shall be automatically subject and subordinate to any mortgages, deeds of trust, ground leases, underleases or other similar interests that are now or hereafter may be placed upon the Shopping Center or the Demised Premises and to any and all advances, renewals and extensions of the same. Notwithstanding the foregoing, any mortgagee may at any time subordinate its mortgage to this Lease, without Tenant's consent, by giving notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such mortgage without regard to their respective dates of execution and delivery, and such mortgagee shall have the same rights with respect to this Lease as though this Lease had been executed prior to the execution and delivery of the mortgage and had been assigned to such mortgagee by Landlord. Tenant shall, within fifteen (15) days after Landlord's request, execute a subordination agreement confirming the foregoing agreements.

20. **Attornment.** Tenant shall in the event of the sale or assignment of Landlord's interest in the Shopping Center or in the Demised Premises, or in the event of any proceedings brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by Landlord covering the Demised Premises, attorn to the purchaser or foreclosure mortgagee and recognize such purchaser or foreclosing mortgagee as Landlord under this Lease. Tenant shall, within fifteen (15) days after Landlord's request, execute an attornment agreement confirming the foregoing agreements.

21. **Access to Premises.** Tenant agrees that Landlord, its agents, employees or servants or any person authorized by Landlord may enter the Demised Premises during Tenant's business hours or at other times agreed by Tenant to inspect the condition of the Demised Premises, to make such repairs, additions, improvements, changes or alterations to the Demised Premises or the Shopping Center as Landlord may elect to make, to perform utility monitoring and to exhibit the same to prospective purchasers of the Shopping Center, or to prospective tenants, and to place in and upon said Demised Premises at such places as may be determined by Landlord "for rent" signs or notices during the last ninety (90) days of the Term. Neither Tenant nor any person within Tenant's control shall interfere with such access, signs or notices. Such entry, inspection and repairs, additions, improvements, changes or alterations as Landlord may make to the Demised Premises or to the Shopping Center shall not constitute eviction of Tenant and the Rent reserved shall not abate while such work is being done by reason of loss or interruption of business of Tenant or otherwise.

22. **Accord and Satisfaction.** No payment by Tenant or receipt by Landlord of a lesser amount than the monthly Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease provided.

23. **Assignment.**

(a) Except with respect to a purchaser of Tenant or the assets of the City of Philadelphia comprising Tenant, Tenant shall not assign, mortgage or encumber this Lease, in whole or in part, or sublet all or any part of the Demised Premises, without prior written notice to Landlord and without Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. If Tenant is a corporation, limited partnership, limited liability company or other entity, any transfer, sale, pledge, or other disposition of the common stock, partnership or membership interest or other power to vote the majority (in excess of 50%) of the outstanding voting interests in such entity shall be considered an assignment of this Lease requiring prior written notification of Landlord and Landlord's written consent. Tenant shall pay to Landlord (together with any request for Landlord's consent to an assignment, sublease or other transfer) the sum of \$1,000.00, to cover Landlord's costs of review and other administrative expenses incurred by Landlord in connection with such proposed transfer.

(b) The notice to Landlord of any assignment or subletting shall not constitute a waiver of the necessity for such notice of any subsequent assignment or subletting. If this Lease is assigned or if the Demised Premises or any part thereof be occupied by anybody other than Tenant, Landlord may collect rent from the assignee or occupant and apply the net amount collected to the Rent herein reserved, but the same shall not be deemed as a consent to such assignment, underletting or occupancy, nor shall collection be deemed a waiver of this provision or the acceptance of the assignee, undertenant or occupant as tenant, or as a release of Tenant from further performance by Tenant of the provisions on its part to be observed or performed herein.

(c) Except with respect to a purchaser of Tenant or the assets of the City of Philadelphia comprising Tenant, notwithstanding any assignment or sublease, Tenant shall remain fully and primarily liable hereunder and shall not be released from performing any of the terms of this Lease. Furthermore, no assignment will be valid unless the assignee shall execute and deliver to Landlord an assumption of liability agreement in form satisfactory to Landlord, including an assumption by the assignee of all of the obligations of Tenant and the assignee's ratification of and agreement to be bound by all the provisions of this Lease; and no subletting will be valid unless Tenant and the subtenant have executed and delivered to Landlord a sublease agreement pursuant to which such subtenant agrees to be bound by the terms of this Lease.

(d) Tenant shall pay to Landlord, as additional rent hereunder, one hundred percent (100%) of all subrents or other sums or economic consideration received by Tenant (after deducting Tenant's reasonable costs of reletting), whether denominated as rentals or otherwise, in excess of the monthly sums which Tenant is required to pay under this Lease.

24. **Broker's Commission.** Landlord and Tenant represent and warrant that no broker or other party has a claim for brokerage commissions or finder's fees in connection with the execution of this Lease, other than the Broker identified in the Fundamental Lease Provisions.

25. **Captions.** The captions, numbers and index appearing herein are inserted only as a matter of convenience and are not intended to define, limit, construe or describe the scope or intent of any paragraph, nor in any way affect this Lease.

26. **Covenant to Bind Successors.** Subject to the limitations on assignment in **Section 24**, it is agreed that the provisions, covenants and conditions of this Lease shall be binding on the legal representatives, heirs, successors and assigns of the respective parties hereto.

27. **Entire Agreement, Etc.** This Lease and the exhibits, riders and/or addenda if any attached set forth the entire agreement between the parties. Any prior conversations or writings are merged herein and extinguished. No subsequent amendment to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed. Submission of this Lease for examination does not constitute an option for the Demised Premises and becomes effective as a Lease only upon execution and delivery thereof by Landlord to Tenant. If any provision contained in a rider or addenda is inconsistent with any other provision of this Lease, the provision contained in said rider or addenda shall supersede said other provision. It is herewith agreed that this Lease contains no restrictive covenants or exclusives in favor of Tenant.

28. **Force Majeure.** Either party to this Lease shall be excused for the period of any delay in the performance of any obligations hereunder, other than the obligation to pay Rent, when prevented from so doing by cause or causes beyond such party's control which shall include, without limitation, all labor disputes, civil commotion, war, war-like operations, invasions, rebellion, hostilities, military or usurped power, sabotage, governmental regulations or controls, fire or other casualty, inability to obtain governmental permits, unusual weather conditions, inability to obtain any materials, services or financing or through acts of God.

29. **Governing Laws.** The laws of the State in which the Shopping Center is located shall govern the validity, performance and enforcement of this Lease; however, the invalidity or unenforceability of any provision of this Lease shall not affect or impair the validity of any other provision.

30. **Inability to Give Possession.** If Landlord is unable to give Tenant possession of the Demised Premises as herein provided by reason of any cause beyond the control of Landlord, Landlord shall not be liable in damages to Tenant therefore, and during the period that Landlord is unable to give possession, all rights and remedies of both parties hereunder shall be suspended, including Landlord's right to receive rent hereunder.

31. **Notices.** Whenever under this Lease a provision is made for any demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either party to give or serve any such notice, demand or declaration to the other, it shall be in writing sent by reputable overnight delivery service or certified mail with postage prepaid, return receipt requested, to the addresses set forth in the Fundamental Lease Provisions. Such notices, demands or declarations shall be deemed effective on the date of receipt (in the case of personal delivery), two (2) days after deposit in the mail (in the case of certified mail) or on the date of confirmation of delivery (in the case of overnight courier service). Either party may change the address for delivery of notices by serving written notice to the other in any manner described above. Any notice given by Landlord's or Tenant's attorneys shall be an acceptable form of notice.

32. **Quiet Enjoyment.** Tenant, upon paying the rents and performing all of the terms of its part to be performed, shall peaceably and quietly enjoy the Demised Premises subject, nevertheless, to the terms of this Lease and to any mortgage, ground lease or other matters to which the title of the Shopping Center, and the land on which the Shopping Center is located, is subject. Landlord represents and warrants that it is not in nor has it received a notice of default under any mortgage, ground lease or other instrument by a party superior to Tenant's rights under this Lease.

33. **Recording.** Tenant shall not record this Lease but will, at the request of Landlord, execute a memorandum or notice thereof in recordable form satisfactory to both Landlord and Tenant specifying the date of commencement and expiration of the Term of this Lease and other information required by statute. Landlord may then record said memorandum or notice of Lease, the costs of recording to be paid by Landlord.

34. **Relationship of Parties.** Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between Landlord and Tenant, it being expressly understood and agreed that neither the method of computation of Rent nor any of the other provisions contained in this Lease, nor any act or acts of the parties hereto, shall be deemed to create any relationship between Landlord and Tenant other than the relationship of Landlord and Tenant.

35. **Rules and Regulations.** Tenant shall comply at all times with the rules and regulations for the Shopping Center set forth in **Exhibit "F"** attached hereto, as the same may be amended, modified, supplemented or replaced by Landlord from time to time.

36. **No Personal Liability.** Notwithstanding anything contained herein to the contrary, Tenant agrees that Landlord shall have no personal liability with respect to any of the provisions of this Lease and Tenant shall look solely to the estate and property of Landlord for the satisfaction of Tenant's remedies, including, without limitation, the collection of any judgment or the enforcement of any other judicial process requiring the payment or expenditure of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms and provisions of this Lease to be observed and/or performed by Landlord. In the event of the sale or other transfer of Landlord's estate, right, title and interest in the Premises or the Shopping Center (except in the case of a sale-leaseback financing transaction in which Landlord is the lessee), Landlord shall transfer and assign to such purchaser or transferee any Security Deposit which may then be held by Landlord pursuant to this Lease, and Landlord thereupon and without further act by either party hereto shall be released from all liability and obligations hereunder derived from this Lease arising out of any act, occurrence or omission relating to the Premises or this Lease occurring after the consummation of such sale or transfer. This **Section 36** shall inure to the benefit of Landlord's successors and assigns and their respective principals.

37. **Attorney's Fees.** In case Landlord or its agents shall on their part be made a party to any litigation commenced by or against Tenant or if Landlord or its agents shall as a result of Tenant's failure to comply with the covenants and agreements on its part to be performed hereunder (including payment of Rent) enforce or collect the same by or through an attorney, then Tenant shall pay all reasonable and actual costs, expenses and reasonable attorneys' fees

incurred or paid by Landlord or its agents or both in enforcing the covenants and agreements of this Lease.

38. **Estoppel Certificates.** Within ten (10) days after request by Landlord, Tenant shall certify in writing, on a form prepared by Landlord, such matters concerning this Lease as Landlord may request. Failure to deliver such certificate in the time set forth herein shall constitute an immediate Event of Default. In addition, upon request of Landlord, Tenant shall provide to Landlord such reasonable and customary financial information regarding Tenant and any guarantors of this Lease as Landlord or its lenders may request, which may include, without limitation, audited balance sheets, income statements and all notes thereto.

39. **Holdover.** If Tenant or any party claiming under Tenant remains in possession of the Premises or any part thereof after any termination of this Lease, no tenancy or interest in the Premises shall result therefrom but such holding over shall be an unlawful detainer and all such parties shall be subject to immediate ouster and removal, and Tenant shall pay upon demand to Landlord during any period which Tenant shall hold the Premises after the Term has expired, as liquidated damages, a sum equal to all Additional Rent provided for in this Lease plus an amount computed at the rate of double the Annual Base Rent for such period plus all damages incurred by Landlord arising by reason of any holdover. If such holding over is with Landlord's written consent, Tenant shall be deemed a tenant from month-to-month; otherwise, Tenant shall be a tenant-at-sufferance.

40. **Irrevocable Offer and Required Approval.** The submission of this Lease for examination does not constitute an offer to lease, or a reservation of or option for the Demised Premises, and this Lease becomes effective only upon execution and delivery thereof by Landlord and Tenant.

41. **Prior Lease.** The parties acknowledge that on or before the date of this Lease, the lease entered into by Greater Germantown Housing Development Corporation and Tenant for 4,112 square feet at the Shopping Center was terminated and neither party shall have any further rights or obligations thereunder.

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

43. **Fair Practices.** Landlord agrees, in performing this Lease, to comply with the provisions of the Fair Practices Ordinance of The Philadelphia Code (Chapter 9-1100) and the Mayor's Executive Order No. 4-86, as they may be amended from time to time, both of which prohibit, inter alia, discrimination against persons with AIDS in employment and services.

44. **Nondiscrimination.**

(a) In the performance of this Lease, Landlord shall not discriminate nor permit discrimination against any person because of race, color, sex, sexual orientation, religion, national origin or ancestry. In the event of such discrimination, the City may terminate this Lease forthwith or exercise any other remedy provided to the City in this Lease or at law or in equity. The foregoing shall not be construed to limit or restrict the City's right to terminate this Lease as set forth in other sections of this Lease.

(b) In accordance with Chapter 17-400 of The Philadelphia Code, Landlord agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, or privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a substantial breach of this Lease entitling the City to all rights and remedies provided in this Lease or otherwise available at law or in equity.

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

(d) Landlord further agrees to cooperate with the Commission on Human Relations in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code

45. **Certification of Non-Indebtedness.** Landlord hereby certifies and represents that Consultant and Landlord's parent company(ies) and subsidiary(ies) are not currently indebted to the City of Philadelphia, PGW or PFMC (collectively the "City"), and will not at any time during the term of this Lease (including any extensions or renewals thereof) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to PGW at law or in equity, Landlord acknowledges that upon any breach or failure to conform to this certification PGW shall have the right to, and may, at the option of PGW, withhold payments otherwise due to Landlord, and, if such breach or failure is not resolved to PGW's satisfaction within a reasonable time frame as specified by PGW in writing, offset any such indebtedness against said payments and/or the termination of this Lease for default (in which case Landlord shall be liable for all excess costs and other damages including reasonable attorney's fees resulting from the termination). Any breach or failure to conform to the aforesaid certifications shall constitute a default by the Landlord and entitle the Tenant to exercise any rights or remedies available to it under this Lease, and at law and in equity.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

City of Philadelphia

LANDLORD:

GERMANTOWN REALTY INVESTMENT
GROUP, LP, a Pennsylvania limited partnership

By: Germantown Realty Investment Group GP,
LLC, its General Partner

By: _____

Name: _____

Title: Manager

Attest:

By: _____

Name: _____

Title: _____

TENANT:

PHILADELPHIA GAS WORKS by
PHILADELPHIA FACILITIES MANAGEMENT
CORPORATION

By: _____

Name: _____

Title: _____

Attest:

By: _____

Name: _____

Title: _____

List of Exhibits

- Exhibit "A-1" Shopping Center
- Exhibit "A-2" Site Plan
- Exhibit "B" Description of Shopping Center
- Exhibit "E" Restrictions and Exclusives
- Exhibit "F" Rules and Regulations

EXHIBIT "A-1"

Shopping Center

Property Photographs

AERIAL MAP AND LAYOUT OF SPACE

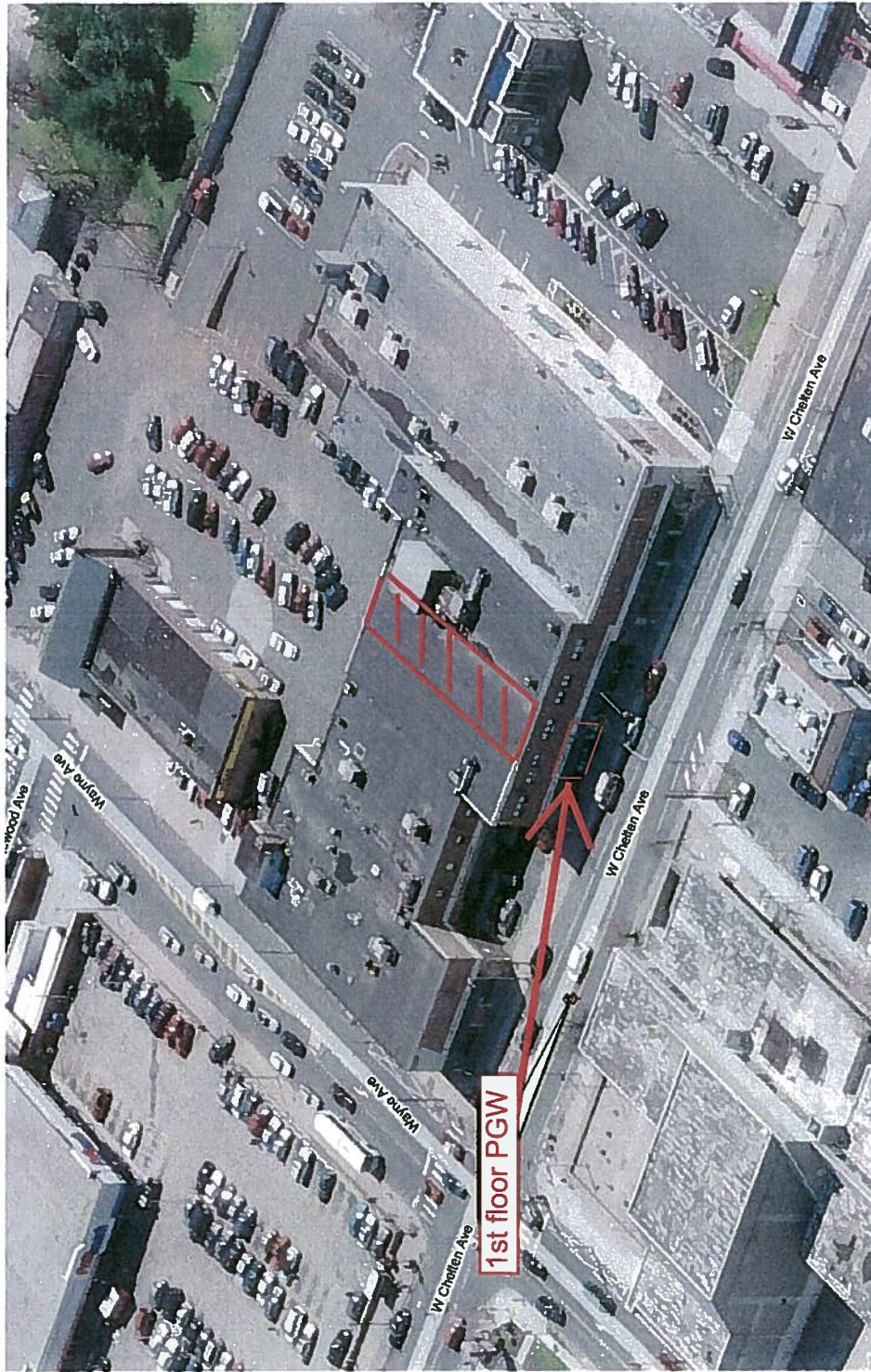


EXHIBIT "A-2"

Site Plan

AERIAL MAP AND LAYOUT OF SPACE

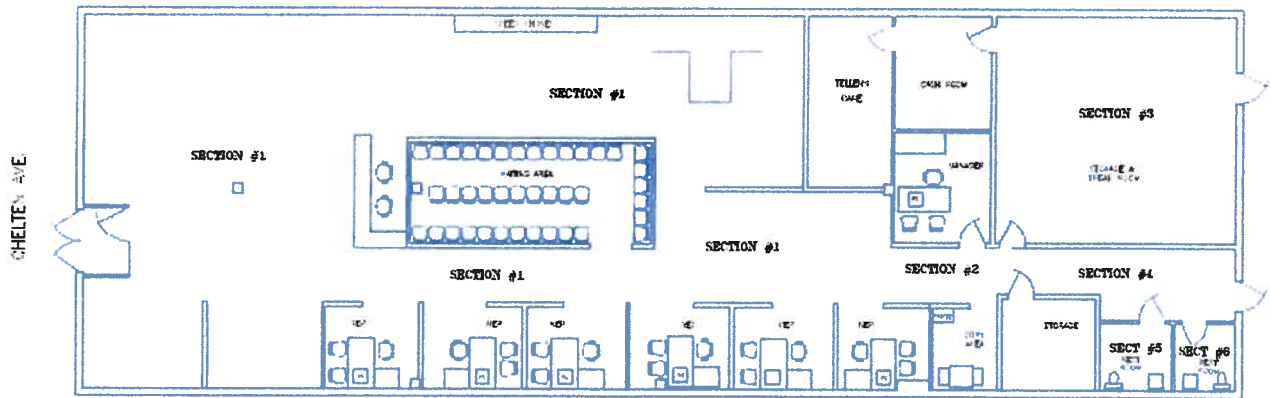


EXHIBIT "B"

Description of Shopping Center

As depicted on Exhibit "A-1", this is a public access shopping center with parking, located in the Germantown section of Philadelphia between two bus routes at West Cheltenham and Wayne Avenues. PGW occupies approximately 4,112 square feet of space located approximately in the middle of the building depicted on Exhibit "A-1", with street frontage on West Cheltenham Avenue.

EXHIBIT "E"

Restrictions and Exclusives

NONE.

EXHIBIT "F"**Rules and Regulations**

1. The sidewalks, entrances, halls, corridors, elevators and stairways of the building shall not be obstructed or used as a waiting or lounging place by tenants, and their agents, servants, employees, invitees, licensees and visitors. The sidewalks, entrances, halls, corridors, elevators and stairways are not for the use of the general public, and Landlord reserves the right in all cases to control and prevent access to any part of the building of all persons whose presence, in the sole judgment of Landlord, its agents, servants or employees, may be prejudicial to the safety, character, reputation or interests of the building or the tenants thereof. All entrance doors leading from any demised premises to the hallways are to be kept closed at all times.

2. Landlord will furnish each tenant with two (2) keys to each entrance or exit door lock on the Premises. Landlord may make a reasonable charge for any additional keys requested by any tenant. Tenant shall not alter any lock or install new or additional locks or bolts on any door without the prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed. Each tenant, upon the expiration or termination of its tenancy, shall deliver to Landlord all keys furnished to the tenant for all locks and bolts in the building, and in the event of the loss of any keys by any tenant, said tenant shall pay to Landlord the replacement cost of same.

3. Tenants will see that (i) the windows are closed, (ii) the doors securely locked, and (iii) all water faucets and other utilities are shut off (so as to prevent waste or damage), each day before leaving the demised premises.

4. Landlord reserves the right to prescribe the date, time, method and conditions that any personal property, equipment, trade fixtures, merchandise, and other similar items shall be delivered to or removed from the building. No iron safe or other heavy or bulky object shall be delivered to or removed from the building, except by experienced safe men, movers or riggers approved in writing by Landlord. Landlord reserves the right to inspect all personalty, fixtures and equipment to be brought into the building, and to exclude any of same in violation of these rules or the provisions of the Lease.

5. The walls, partitions, skylights, windows, doors and transoms that reflect or admit light into passageways or into any other part of the building shall not be covered or obstructed by any of the tenants.

6. No sign, insignia, advertisement, object, notice or other lettering shall be exhibited, inscribed, painted or affixed by any tenant on any part of the exterior of the premises or building without the prior written approval of Landlord, which approval shall not be unreasonably withheld or delayed. In the event of any violation of this requirement by any tenant, Landlord may remove the same without any liability, and charge the expense incurred in such removal to the tenant that violated same.

7. No signaling, telegraphic or telephonic instruments or devices, or other wires, instruments or devices, shall be installed in connection with any demised premises without the prior written approval of Landlord, which approval shall not be unreasonably withheld or

delayed. Such installations, and the boring or cutting for wires, shall be made at the sole cost and expense of the tenant and under the control and direction of Landlord. Landlord retains in all cases the right to require (i) the installation and use of such electrical protecting devices that prevent the transmission of excessive currents of electricity into or through the building, (ii) the changing of wires and of their installation and arrangement under ground or otherwise as Landlord may direct, and (iii) compliance on the part of all using or seeking access to such wires with such rules as Landlord may establish relating thereto. All such wires used by tenants must be clearly tagged at the distribution boards and junction-boxes and elsewhere in the building, with (i) the number of the demised premises to which said wires lead, (ii) the purpose for which said wires are used, and (iii) the name of the company operating same.

8. Tenant, their agents, servants or employees, shall not (a) make any improper noises or disturbances of any kind in the building, (b) make or defile any part of the building, (c) interfere in any way with (i) the use and occupancy of other tenants of the building, and (ii) the management and operation of the building by Landlord, its agents, servants or employees, (d) go upon the roof of the building, (e) use any additional method of heating or air-conditioning the demised premises without first informing the landlord, (f) sweep or throw any dirt or other substance from the demised premises into any of the halls, corridors, elevators, or stairways of the building, (g) bring in or keep in or about the demised premises any bicycles, vehicles, animals, birds or fish of any kind, except for service animals, (h) install any radio or television antennae or any other device or item on the roof, exterior walls, windows or window-sills of the building, (i) place objects against glass partitions, doors or windows which would be unsightly from the interior or exterior of the building, and (j) use any demised premises (i) for the storage of merchandise for sale to the general public, (ii) for lodging, sleeping, or for any immoral or illegal purposes, (iii) for cooking (except as permitted by the provisions of the Lease; provided, however, that odors of cooking shall not be permitted to emanate from the Premises), (iv) for an employment agency, or for securing employees other than those to be employed by tenants at the building, or for the payment of salaries or wages to employees or persons who are not employed in the building, (v) for the business of stenography, typewriting or any similar business, (vi) for the possession, storage, manufacture, or sale of liquor, narcotics, dope, tobacco in any form, or as a barber, or manicure shop, (vii) for the sale at auction of merchandise or other property of any kind, and (viii) for the selling of any goods, items or merchandise, either at wholesale or retail.

9. Tenants shall not (i) fasten articles to, drill or make holes in, or drive nails or screws into the floors, ceilings, or doors of any demised premises, and (ii) mark, break, paint, paper or otherwise cover the floors, walls, ceilings, doors and partitions, of any demised premises, without the prior written consent of Landlord. The expense of repairing any damage resulting from a violation of this rule shall be borne by the tenant by whom, or by whose agents, servants, employees, invitees, licensees or visitors, such damage shall have been caused.

10. No canvassing, soliciting, distribution of handbills or other written material, or peddling shall be permitted in the building, and tenants shall cooperate with Landlord in the prevention and elimination of same.

11. Landlord may change the name or address of the building at any time without notice and without liability to any tenant. Tenants shall not use the name of the building in any way in connection with their respective businesses, except as the address of same. Landlord may

prohibit any advertising by any tenant, which in Landlord's opinion, tends to impair the reputation of the building or the desirability of same as a building for offices; and upon written notice from Landlord, any tenant shall refrain from or discontinue such advertising.

12. Landlord may waive any one or more of the rules and regulations herein set forth for the benefit of a particular tenant or tenants, and no such waiver by Landlord shall (i) be construed as a waiver of such waived rule(s) or regulation(s) in favor of other tenants, or (ii) prevent the enforcement of same by Landlord against such other tenants.

13. Landlord reserves the right to make reasonable amendments, modifications, deletions and additions to the rules and regulations, and to make additional reasonable rules and regulations, as in Landlord's sole judgment may from time to time be needed for the safety, care, cleanliness, reputation, appearance and preservation of good order of the building.

14. No tenant shall do or permit anything to be done in said premises, or bring or keep anything therein, which will in any way increase the rate of fire insurance on said building, or on property kept therein, or obstruct or interfere with the rights of other tenants, or in any other way injure or annoy them, or conflict with the laws relating to fires, or with the regulations of the Fire Department, or with any insurance policy upon said building or any part thereof, or conflict with any of the rules and ordinances of the Board of Health and any other constituted authorities.

If these Rules and Regulations conflict with the terms of the Lease, the terms of the Lease shall govern.