

MASTER GROUND LEASE

THIS MASTER LEASE AGREEMENT (“Lease”) dated as of JANUARY 2, 2008 (“Effective Date”), is made by the CITY OF PHILADELPHIA, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania (“City” or “Landlord”), acting through its FAIRMOUNT PARK COMMISSION and its PUBLIC PROPERTY DEPARTMENT, 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, bounded by the Benjamin Franklin Parkway, 20th Street, 21st Street, and Pennsylvania Avenue (“Premises”), that is particularly described in **Exhibit A** of the Sublease (defined below), which is attached to and part of this Lease.

B. The Barnes Foundation (“Foundation”) is a nonprofit corporation that, among other things, administers an art education facility in its Existing Lower Merion Facility (as that phrase is defined in the Sublease). The Foundation displays the Barnes Collection (as that phrase is defined in the Sublease) in the public galleries of its Existing Lower Merion Facility.

C. The Foundation desires to develop, construct and operate a new art education facility including galleries to display the Barnes Collection in Center City Philadelphia.

D. The City desires to provide the Premises as the site on which the Foundation will develop, construct and operate an art education facility including galleries to display the Barnes Collection.

E. Tenant desires to execute and deliver this Lease with the City, and to execute and deliver a sublease in substantially the form set forth at **Attachment 1** (“Sublease”) with the Foundation as subtenant, to facilitate the Foundation’s development, construction and operation of a new art education facility, including galleries to display the Barnes Collection, in Philadelphia as described in the Sublease.

F. By order of the Court of Common Pleas for Montgomery County, Orphans’ Court Division, dated December 13, 2004, the previously-existing restrictions in the Foundation’s governing documents that would have prevented the Foundation from relocating its art education facility and public galleries from the Existing Lower Merion Facility were removed.

G. The City determined that the unique use of the Premises and the Improvements by the Foundation as an art education facility, including galleries, in accordance with the Sublease will provide an exceptional public benefit to the City and its residents. In addition, the City believes that no other institution in the world has a collection of art work of the quality and scope of the Barnes Collection, and its accessibility to the public will also provide an exceptional benefit to the City and its residents.

H. On March 16, 2007, the Foundation’s Board of Trustees passed a resolution authorizing its officers to execute and deliver the Sublease. A copy of the resolution is attached as **Exhibit C** to the Sublease.

I. On May 24, 2007, 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. A copy of a letter from the Commission Secretary confirming the Commission’s adoption of the resolution is attached as **Exhibit D** to the Sublease.

J. On August 21, 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.

K. On June 14, 2007, the City Council of the City enacted an ordinance (Bill number 070462) authorizing the execution and delivery of this Lease, approving the Sublease, and stating the City’s findings and policy purpose in authorizing this Lease and the Sublease. The Sublease was an exhibit and integral part of Bill 070462. Bill number 070462 has become law. A copy of the Ordinance (Bill number 070462), certified by the Chief Clerk of the City Council 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 above and below 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.

“**Foundation**” 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 Acceptance Period**” has the meaning given it in **Section 19.1.3**.

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

“**Master Lease Election Notice**” has the meaning given it in **Section 19.1.3.1**.

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

“**Master Lease Initial Term**” has the meaning given it in **Section 2.1.2**.

“**Master Lease Offer Notice**” has the meaning given it in **Section 19.1.2.1**.

“**Master Lease Offer Period**” has the meaning given it in **Section 19.1.2**.

“**Master Lease Operating Term**” has the meaning given it in **Section 2.1.3**.

“**Master Lease Right of Lease**” has the meaning given it in **Section 19.1.1**.

“**Master Lease Right of Purchase**” had the meaning given it in **Section 19.1.1**.

“**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 E**.

“**Subtenant**” means the Foundation.

“**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, 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 Use.

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 Master Lease 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, and to perform all other necessary, prudent and desirable work on or to the City Conduits, provided that the work shall be performed so as to not unreasonably interfere with the use of any Improvements on the Premises.

ARTICLE 2

TERM

2.1 Term.

2.1.1 Master Lease Term. The term of this Lease ("**Master Lease Term**") includes the Master Lease Initial Term and the Master Lease Operating Term. The Master Lease Term ends one day after the Sublease Ending Date under the Sublease ("**Master Lease Ending Date**").

2.1.2 Master Lease Initial Term. The initial term of this Lease ("**Master Lease Initial Term**") begins on the Initial Term Commencement Date under the Sublease ("**Master Lease Commencement Date**"). The Master Lease Initial Term ends at the earlier of (i) the commencement of the Master Lease Operating Term, or (ii) one day after the Sublease Ending Date.

2.1.3 Operating Term. The “**Master Lease Operating Term**” under this Lease begins on the Operating Term Commencement Date under the Sublease and expires on the Master Lease Ending Date.

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 expressly provides that any obligations survive the Master Lease Ending Date.

2.3 Confirmation of Master Lease Operating Term Commencement Date. Tenant’s and the Subtenant’s confirmation of the Operating Term Commencement Date under the Sublease is evidence of the commencement of the Master Lease Operating Term. Tenant shall not agree to or sign any written confirmation of the Operating Term Commencement Date under the Sublease without the prior approval of the Executive Director. Any agreement or confirmation by Tenant in violation of this Section 2.3 is void.

ARTICLE 3

RENT

3.1 Base Rent. As base rent for the Master Lease Term, Tenant has paid to the Landlord the sum of \$1.00, receipt of which is hereby acknowledged by Landlord. The nominal base rent under this Lease serves the public purpose of this Lease and the Sublease.

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

SUBLEASE; COMPLIANCE WITH APPLICABLE LAWS

5.1 Sublease. Contemporaneously with execution of this Lease, Tenant shall execute the Sublease with Subtenant and deliver the Sublease to 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 paragraphs D, G, I, and K. Tenant acknowledges and agrees that its obligation to execute the Sublease, and Subtenant's obligation to use the Premises for the Primary Use under the Sublease,

1. are a material and substantial consideration to Landlord under this Lease;
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 Primary Use 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. So long as Landlord exercises reasonable care in its operation, maintenance, repair and replacement of the City Conduits in accordance with municipal standards, Landlord shall not be liable in any manner whatsoever to Tenant, the Subtenant, or any other occupants or users of Subtenant's Facility or the Improvements for any damage to the Premises, Subtenant's Facility, or any Improvements, caused by, arising from, or related to the operation, maintenance, repair or replacement of the City Conduits.

ARTICLE 7

TITLE TO IMPROVEMENTS; NO LIENS

7.1 Title to Improvements.

7.1.1 If within 60 days following the Sublease Ending Date Landlord directs Tenant in writing that Subtenant shall raze Tenant's Facility and the other Improvements, then

Tenant promptly shall direct Subtenant in writing to raze Tenant's Facility and the 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 within 60 days following the Sublease Ending Date Landlord does not notify Tenant to direct Subtenant to raze the Improvements and restore the Premises as provided in Section 7.1.1 above, then title to the Improvements shall automatically vest in, and become the property of, the City.

7.1.3 On or before the Sublease Ending Date, Tenant shall require Subtenant to deliver to Landlord the "as-built" plans, specifications, drawings and other documentation relating to the construction and/or physical operation of the Improvements then existing on the Premises.

7.1.4 If title to the 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.

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

7.1.6 Notwithstanding anything to the contrary in this Lease, neither Landlord nor Tenant has nor at any time shall have any right, title or interest in or to the Barnes Collection or any part of the Barnes Collection or any other works of art located upon the Premises (except any other works of art loaned by Landlord or Tenant to Subtenant).

7.2 No Liens on Fee.

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, by Subtenant's demolition of the Youth Study Center, Subtenant's construction of Subtenant's Facility, 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 [Intentionally omitted].

7.4 Costs of Demolition and Construction. Throughout the Master Lease Term, Landlord is not obligated to perform or pay for any cost or expense for demolition of the Youth Study Center, Subtenant's initial construction of Subtenant's Facility or any other Improvements, or 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 Landlord 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

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 subjecting 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 and Subtenant, 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.

ARTICLE 11

SURRENDER OF THE PREMISES OR THIS LEASE; NO MERGER

11.1 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.

11.2 No Merger of Estates. Subject to the Lease Recognition Agreement, the voluntary or other surrender of the Improvements, the Premises, or this Lease, by Tenant, or a mutual cancellation of this Lease, will not merge the Landlord's estate in the Premises and Tenant's estate, or merge Landlord's estate and Subtenant's estate in the Premises, unless Landlord expressly agrees in writing.

11.3 Tenant's Obligations Continue. Tenant's obligations under this **Article 11** survive the expiration or earlier termination of this Lease.

ARTICLE 12

SUBLEASES, MORTGAGES, ASSIGNMENTS AND TRANSFERS PROHIBITED

12.1 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 and as expressly permitted in the Sublease, 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 13

DISCRIMINATION PROHIBITED; NO DEBT TO CITY

13.1 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.

13.2 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.

13.3 Prohibited Gifts, Gratuities, and Favors.

13.3.1 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.

13.3.2 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 14

NOTICES

14.1 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: Chair
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

14.2 Date of Notice Delivery. For purposes of this Lease, notice given in the manner provided in **Section 14.1** 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.

14.3 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 15

ESTOPPEL CERTIFICATES; LEASE RECOGNITION AGREEMENT

15.1 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.

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

15.3 Mortgages. 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 or leasehold interest (other than that created by this Master Lease). Throughout the Master Lease Term, this Lease is and shall be 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.

15.4 Lease Recognition Agreement. Contemporaneously with the execution of this Sublease, Landlord, Tenant and the City have executed and delivered a Lease Recognition Agreement in the form of that attached as Exhibit H to the Sublease.

ARTICLE 16

NOTICE FROM SUBTENANT; APPROVALS BY LANDLORD; ENFORCEMENT BY LANDLORD; MANNER OF APPROVALS

16.1 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.

16.2 Landlord's Approvals of Subtenant Requests. Except where the provisions of this Lease or the Sublease expressly require Subtenant to obtain separate approvals of both Landlord and Tenant (in Tenant's capacity as "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.

16.3 Enforcement by Landlord. Tenant acknowledges and agrees that all of the City's rights and remedies provided in the Sublease, and all of Tenant's rights and remedies under the Sublease (in Tenant's capacity as "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.

16.4 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 or approvals that this Lease expressly requires be obtained from City Council or a specified City official other than the Executive Director), such review, consent or approval, or determination will be effective, valid and binding against the City only if obtained from or made by the Executive Director and in the manner required by this Lease. Whenever the review, consent or approval of, or determination by, a specified City official (other than the Executive Director), commission, department, or council is required under this Lease, then the review, consent or approval, or determination will be effective, valid and binding against the City only if obtained from or made by the specified official, commission, department, or council in the manner specified.

16.5 Effect of Landlord's Approval. Landlord review, approval, consent, determination, or acceptance of any document, work, matter or thing under this Lease or submitted to Landlord by Subtenant in accordance with the Sublease (including but not limited to Subtenant's design plans for Subtenant's Facility and for any Alteration or other work made or done by or for Subtenant) is not

16.5.1 a representation, warranty or guaranty by Landlord as to the substance, accuracy, or quality of the document, work, matter, or thing, or

16.5.2 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, Subtenant, their officials, officers, employees, agents, contractors and subcontractors, must each use their own independent judgment as to the substance, accuracy and quality of all documents, work, matter, and things.

16.6 Landlord Accepts Requirement of Performance by Subtenant. Provided Tenant has required Subtenant to perform any obligations set forth under this Lease, Landlord agrees to

look solely to Subtenant 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 17

[Intentionally omitted.]

ARTICLE 18

QUIET ENJOYMENT; LANDLORD'S RIGHT TO INSPECT

18.1 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 Master Lease 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 18.1** is subject to the provisions of this Lease, including Landlord's limited right to enter and inspect the Premises provided in **Section 18.2** below.

18.2 Landlord's Right to Enter Premises. Notwithstanding the provisions of **Section 18.1**, 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, (b) exercising Landlord's remedies under this Lease, or (c) not more than once each year, determining Subtenant's compliance with the Sublease.

ARTICLE 19

RIGHT OF OFFER TO PURCHASE PREMISES; RIGHTS AT END OF TERM

19.1 Right of First Offer to Purchase Premises.

19.1.1 Grant of Right. By this Lease, subject to the remaining provisions of this **Article 19**, Landlord grants, conveys and transfers to Tenant the first and prior right and privilege of (a) purchasing the Premises (the "**Master Lease Right of Purchase**") and (b) leasing the Premises (the "**Master Lease Right of Lease**"). The Master Lease Right of Purchase and the Master Lease Right of Lease do not apply to a sale or leasing of the Premises or a portion of the Premises, or of all or any portion of any improvements in or on the Premises, to any of the City's related agencies or to any municipal, governmental or quasi-governmental authority.

19.1.2 Offer Notice. At any time during the Master Lease Term and during the two-year period after the Master Lease Ending Date (“**Master Lease Offer Period**”),

19.1.2.1 if Landlord desires or intends to sell or lease all or any part of the Premises, or if Landlord receives an unsolicited offer to purchase or lease all or any part of the Premises, then before offering the Premises or any part of the Premises for sale or lease, engaging in negotiations with any offeror or party, or accepting an offer to sell or lease all or part of the Premises during the Master Lease Offer Period, Landlord shall first give written notice to Tenant (the “**Master Lease Offer Notice**”) of Landlord’s desire or intention. Landlord’s Master Lease Offer Notice shall include or have attached to it:

A. the price, terms and conditions of, or procedures for implementing, the proposed sale or lease that are acceptable to Landlord or are otherwise required by Applicable Laws;

B. Landlord’s offer to sell or lease the Premises or applicable portion thereof to Tenant at the stated price and on the stated terms and conditions, or

C. a notice of the procedures Landlord will follow to implement the sale or lease (for example, without limitation, legally required public bidding).

19.1.2.2 Tenant acknowledges and agrees that Landlord may inform any party making an offer to the Landlord to purchase or lease some or all of the Premises, or any party that might be interested in purchasing or leasing the Premises, of this **Section 19.1.2** and of this Sublease.

19.1.3 Tenant’s Investigations and Election. Within sixty (60) days following the day on which Tenant receives the Master Lease Offer Notice (“**Master Lease Acceptance Period**”), Tenant may elect to accept or reject the terms and conditions of the Master Lease Offer Notice or to participate in the procedures by which Landlord intends to sell or lease some or all of the Premises.

19.1.3.1 To validly accept the Master Lease Offer Notice, Tenant must notify Landlord in writing of Tenant’s election to accept the terms of the Master Lease Offer Notice (the “**Master Lease Election Notice**”) before the expiration of the Acceptance Period.

19.1.3.2 If Tenant elects to accept the terms of the Master Lease Offer Notice, then (1) Landlord and Tenant shall execute a mutually acceptable purchase or lease agreement (as applicable) within ninety (90) days following the date on which Landlord receives the Master Lease Election Notice, or (2) Tenant shall participate in the procedures instituted by Landlord to sell or lease (as applicable) some or all of the Premises in accordance with Applicable Laws.

19.1.3.3 Notwithstanding any closing date specified in the Master Lease Offer Notice (if applicable), Tenant may in its Master Lease Election Notice specify the actual closing date for the conveyance of title to the property described in the Master Lease Offer Notice, and validly accept the other terms and conditions of the Master Lease Offer Notice, in which event the closing date shall be the date so specified in the Master Lease Election Notice, provided that said closing date is not more than one (1) year after the date of the Master Lease Offer Notice.

19.1.4 Tenant's Rejection.

19.1.4.1 For purposes of this **Section 19.1.4** only, the terms “sell” and “sale” mean the full execution of a purchase and sale agreement pursuant to which the parties to the agreement agree to the terms and conditions for the transfer of title to the Premises or a portion of the Premises. In addition, for purposes of this **Section 19.1.4**, the term “lease” means the full execution of a lease, license or other occupancy agreement pursuant to which the parties to the lease agree to the terms and conditions for the occupancy of the Premises or a portion of the Premises.

19.1.4.2 If Tenant elects to reject the terms of the Master Lease Offer Notice, or fails to respond to the Master Lease Offer Notice within the Master Lease Acceptance Period (in which case Tenant will be deemed to have rejected the Master Lease Offer Notice), then (A) Landlord may market the portion of the Premises specified in the Master Lease Offer Notice on the open market, or (B) if the Offer Notice is based on an offer Landlord received to purchase or lease some or all of the Premises, Landlord may sell or lease some or all of the Premises in accordance with the provisions set forth in the Master Lease Offer Notice. If Landlord markets the Premises under 19.1.4.2(A), Tenant will also receive any information given to prospective buyers.

19.1.4.3 If Landlord receives an acceptable offer (in Landlord's sole discretion) from a third party which is less than ninety percent (90%) of the sale price or rental rate specified in the Master Lease Offer Notice, Landlord shall inform Tenant of such offer and its terms in an Master Lease Offer Notice and Tenant will have the right, within thirty (30) days of Landlord's notice to Tenant of such offer, to notify Landlord of its desire to purchase or lease (as applicable) the property identified in the Master Lease Offer Notice.

19.1.4.4 If Landlord does not sell or lease (as applicable) the property identified in the Master Lease Offer Notice within eighteen (18) months following Tenant's rejection or deemed rejection of the Master Lease Offer Notice, and if the Master Lease Right of Purchase or Master Lease Right of Lease (as applicable) has not terminated or expired, Landlord may not sell or lease the property identified in the Master Lease Offer Notice or any part of the Premises or offer the Premises for sale or lease without first delivering to Tenant a new Master Lease Offer Notice, which Tenant may accept or reject in accordance with the terms of this Section.

19.1.4.5 If Landlord enters into an agreement to sell or lease the property identified in the Master Lease Offer Notice to a party (other than Tenant) as

permitted by this Section, the parties to the agreement for the sale or lease (as applicable) may not modify the terms of the transaction specified in the sale or lease agreement by adjusting the sale price or rental rate (as applicable) to a sale price or rental rate that is less than ninety percent (90%) of the sale price or rental rate set forth in the Master Lease Offer Notice, unless Landlord first delivers to Tenant a new Master Lease Offer Notice containing the modified price, terms and conditions, which Master Lease Offer Notice Tenant may accept or reject in accordance with the provisions this Section.

19.2 Subject to Public Bidding Requirements. Notwithstanding any provision of this Article to the contrary, the rights of Tenant set forth in this Article are subject to the then-prevailing Applicable Laws regarding the sale or leasing of the Premises, including without limitation possible requirements for public notice and bidding.

19.3 Survival. The Master Lease Right of Purchase and the Master Lease Right of Lease will survive the expiration of the Master Lease Term for a period of two (2) years but will end immediately upon any earlier Master Lease Ending Date.

19.4 Assignment to Subtenant. Landlord hereby consents to Tenant's assignment of all of its rights pursuant to **Article 19** to Subtenant.

ARTICLE 20

GENERAL PROVISIONS

20.1 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.

20.2 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.

20.3 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 obligations 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.

20.4 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.

20.5 Interpretation.

20.5.1 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.

20.5.2 Unless expressly provided otherwise, all references in this Lease to sections, exhibits, and attachments refer to sections, exhibits and attachments of and to this Lease. Unless expressly 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.

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

20.6 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).

20.7 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.

20.8 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 that is in any way or manner contrary to any specific provision of this Lease, and does not in any way or manner modify any provision of this Lease.

20.9 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 approved and signed by both Landlord and Tenant. A copy of any proposed amendment, modification or supplement to this Lease must be delivered to Subtenant prior to the introduction of the ordinance authorizing such amendment, modification or supplement. 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. No amendment, modification or supplement to this Lease may be made which adversely affects the rights of Subtenant under the Sublease or Subtenant's third-party rights hereunder without Subtenant's prior written consent.

20.10 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 expressly 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.

20.11 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.

20.12 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.

20.13 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 survive such expiration or earlier termination of this Lease and continue to be binding upon the applicable party.

20.14 Memorandum of Lease. The parties shall execute and deliver 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.

20.15 No Personal Liability of Landlord Officials. No official, officer, or employee of Landlord shall have any liability, personal or otherwise, with respect to this Lease or the transaction contemplated by this Lease. The property and assets of Landlord's officials, officers, and employees shall not be subject to attachment, levy, execution or other judicial process. Any liability of Landlord under or related to this Lease shall be limited to and enforceable against Landlord's interest in the Premises and the lien of any judgment shall be restricted to Landlord's interest in the Premises.

20.16 No Personal Liability of Tenant Officials. No director, official, officer, or employee of Tenant shall have any liability, personal or otherwise, with respect to this Lease or the transaction contemplated by this Lease. The property or assets of Tenant's officials, officers, and employees shall not be subject to attachment, levy, execution or other judicial process. Any liability of Tenant shall be limited to and enforceable against Tenant's interest in the Premises and the lien of any judgment shall be restricted to Tenant's interest in the Premises.

20.17 Third Party Rights. Except as provided in Section 10.2, Section 12.1, Article 16, Article 19, and Section 20.9, and this Section 20.17 as to the Subtenant, nothing in this Lease shall be construed to constitute, create or confer rights, remedies or claims in or upon any person or entity not a party hereto or to create obligations or responsibilities of the parties hereto to any of such persons or to permit any such person or entity to rely upon the covenants, conditions and agreements contained herein.

[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

APPROVED AS TO FORM
ROMULO L. DIAZ, JR. CITY SOLICITOR

PER *Lawrence K. Cozefano*
Senior City Solicitor

[Signature]
Robert N. C. Nix, III, President

Mark A. Focht
Mark A. Focht, Executive Director, Fairmount Park

DEPARTMENT OF PUBLIC PROPERTY

Joan Schlotterbeck
Joan Schlotterbeck, Commissioner, Public Property

TENANT:

CORPORATE SEAL:

**PHILADELPHIA AUTHORITY FOR
INDUSTRIAL DEVELOPMENT**

BY: *[Signature]*
Chairman/Vice Chairman

BY: *[Signature]*
Secretary/Treasurer

[Handwritten notes and signatures]
EBB
1/4/08

Commonwealth of Pennsylvania :
County of Philadelphia : ss.

On this, the 2nd day of January, 2007, before me,

Notary Public of PA, the undersigned officer, personally appeared Robert N. C. Nix, III, who acknowledged himself to be President of the Fairmount Park Commission of the City of Philadelphia in the Commonwealth of Pennsylvania, and that he as such President, being authorized to do so, executed the foregoing instrument by signing the name of the City of Philadelphia by himself as President of the Fairmount Park Commission.

I have set my hand and official seal.

Carol J. Roache
Notary Public
My Commission Expires:

Sept 11, 2008

[Notary Seal]

Commonwealth of Pennsylvania :
County of Philadelphia : ss.

On this, the 2nd day of January, 2008, before me,

Notary Public of PA, the undersigned officer, personally appeared Mark A. Focht, who acknowledged himself to be Executive Director of Fairmount Park of the City of Philadelphia in the Commonwealth of Pennsylvania, and that he as such Executive Director, being authorized to do so, executed the foregoing instrument by signing the name of the City of Philadelphia by himself as Fairmount Park Executive Director.

I have set my hand and official seal.

Carol Roache
Notary Public
My Commission Expires:
Sept 11, 2008

[Notary Seal]

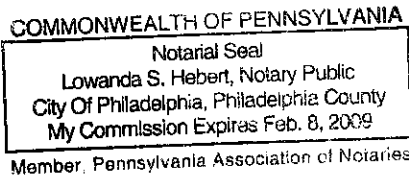
COMMONWEALTH OF PENNSYLVANIA
NOTARY SEAL
CAROL ROACHE
Notary Public
My Commission Expires 09/11/2008

Commonwealth of Pennsylvania :
County of Philadelphia : ss.

On this, the 2nd day of January, 2008, before me,

Notary Public of Pennsylvania, the undersigned officer, personally appeared Joan Schlotterbeck, who acknowledged herself to be Commissioner of the Department of Public Property of the City of Philadelphia in the Commonwealth of Pennsylvania, and that she as such Commissioner, being authorized to do so, executed the foregoing instrument by signing the name of the City of Philadelphia by herself as Public Property Commissioner.

I have set my hand and official seal.



Lowanda S. Hebert

Notary Public
My Commission Expires:

Feb 8, 2009

[Notary Seal]

County of Philadelphia : ss.

On this, the 4 day of January, 2007 before me,

Notary Public JO, the undersigned officer, personally appeared Joe M. Menner, who acknowledged himself to be Chairman or Vice Chairman of the Philadelphia Authority for Industrial Development in the Commonwealth of Pennsylvania, and that he as such Chairman, being authorized to do so, executed the foregoing instrument by signing the name of the Philadelphia Authority for Industrial Development by himself as Chairman or Vice Chairman.

I have set my hand and official seal.

Joann D'Angelo
Notary Public
My Commission Expires:

[Notary Seal]

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
JOANN D'ANGELO, Notary Public
City of Philadelphia, Phila. County
My Commission Expires December 21, 2010

Exhibit 1

Attachment 1

Sublease

GROUND SUBLEASE

BETWEEN

PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT

AND

THE BARNES FOUNDATION

Dated: _____

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EXHIBITS

- Exhibit A - The Premises
- Exhibit B - Memorandum of Master Lease
- Exhibit C - Resolution of Tenant's Board of Trustees
- Exhibit D - Copy of Commission's Resolution
- Exhibit E - Copy of PAID's Resolution
- Exhibit F - Copy of the City Ordinance
- Exhibit G - Economic Opportunity Plan
- Exhibit H - Lease Recognition Agreement
- Exhibit I - Form of Memorandum of Sublease

GROUND SUBLEASE

THIS GROUND SUBLEASE (“Sublease”), dated as of _____, 2007 (“Effective Date”), is made by the PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT, a Pennsylvania body politic and corporation (“PAID” or “Landlord”), and THE BARNES FOUNDATION, a Pennsylvania non-profit corporation (“Tenant”).

BACKGROUND

A. The City of Philadelphia (“City”) owns the real property in the City of Philadelphia, Philadelphia County, Pennsylvania, bounded by the Benjamin Franklin Parkway, 20th Street, 21st Street, and Pennsylvania Avenue (“Premises”), as described in **Exhibit A**, which is attached to and part of this Sublease.

B. The City, as landlord, executed a lease agreement dated the same date as this Sublease (“Master Lease”) with PAID, as tenant, for the Premises. The City and PAID intend to record a memorandum of the Master Lease, in the form set forth in **Exhibit B**, in the Department of Records for the City of Philadelphia.

C. Tenant is a nonprofit corporation which, among other things, administers an art education facility in Lower Merion Township, Montgomery County, Pennsylvania (“Existing Lower Merion Facility”). The Existing Lower Merion Facility includes public galleries in which a portion of the world renowned art collection assembled by the late Albert C. Barnes is displayed (the portion of the art collection that is displayed in the public galleries of the Existing Lower Merion Facility is referred to in this Sublease as the “Barnes Collection”).

D. Tenant desires to construct a new art education facility in Center City Philadelphia.

E. By order of the Court of Common Pleas for Montgomery County, Orphans’ Court Division, dated December 13, 2004, the previously-existing restrictions in Tenant’s governing documents that would have prevented Tenant from relocating its art education facility and public galleries from the Existing Lower Merion Facility were removed.

F. The City desires to provide the Premises under the Master Lease as the site on which Tenant will construct an art education facility in accordance with this Sublease.

G. The City has determined that the unique use of the Premises and the Improvements by the Foundation as an art education facility in accordance with this Sublease will provide an exceptional public benefit to the City and its residents. In addition, the City believes that no other institution in the world has a collection of art work of the quality and scope of the Barnes Collection, and its accessibility to the public will also provide an exceptional benefit to the City and its residents.

H. On March 16, 2007, the Tenant’s Board of Trustees passed a resolution authorizing its officers to execute this Sublease. A copy of the resolution is attached to this Sublease as **Exhibit C**.

I. On May 24, 2007, the Fairmount Park Commission adopted a resolution authorizing the President of the Fairmount Park Commission and the Executive Director of Fairmount Park to execute the Master Lease and approving this Sublease. As stated in its resolution, the Fairmount Park Commission determined that the unique use of the Premises and the Improvements by the Foundation to construct and operate an art education facility and galleries for the Barnes Collection in accordance with this Sublease will enhance park facilities and benefit park users. The Commission Secretary confirmed the Commission's adoption of the resolution by letter dated June 11, 2007. A copy of the Commission Secretary's letter is attached as **Exhibit D**.

J. On August 21, 2007, PAID adopted a resolution approving the execution and delivery of the Master Lease and this Sublease. A copy of the PAID resolution is attached as **Exhibit E**.

K. On June 14, 2007, the City Council of the City enacted an ordinance (Bill number 070462) authorizing the execution of the Master Lease, approving this Sublease, and stating the City's findings and policy purpose in authorizing the Master Lease and this Sublease. This Sublease was an exhibit and integral part of Bill 070462. Bill number 070462 has become law. A copy of Bill number 070462 is attached as **Exhibit F**.

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

DEFINITIONS

All capitalized words and phrases used in this Sublease have the meanings set forth below.

"Acceptance Period" has the meaning given it in **Section 18.1.3**.

"Additional Rent" means all sums other than Basic Rent that Tenant is obligated to pay under this Sublease.

"Alteration" and **"Alterations"** have the meaning given then in **Section 7.1.1**.

"Applicable Law" and **"Applicable Laws"** mean all present and future laws, statutes, ordinances, orders, requirements, judgments, regulations, administrative or judicial determinations, as amended from time to time, even if unforeseen or extraordinary, of every governmental or quasi-governmental authority, court or agency claiming jurisdiction over, and applicable, to: the Premises, Tenant's use of the Premises, and Tenant's operations on the Premises; the Improvements; or this Sublease. **"Applicable Law"** and **"Applicable Laws"** include but are not limited to the following, even if compliance with the Applicable Law necessitates structural changes to the Improvements or the making of Improvements, or results in interference with the use or enjoyment of all or any portion of the Premises:

1. Applicable Laws pertaining to Hazardous Substances, Contamination, and remediation of Contamination;
2. laws and regulations relating to accessibility to, usability by, and discrimination against, disabled individuals, including but not limited to 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 and regulations promulgated pursuant to that law, as any or all of those laws, rules and regulations may be amended from time to time;
3. all building, zoning, and traffic ordinances, regulations, and codes;
and
4. all valid and enforceable covenants, restrictions, and conditions now or in the future of record that may be applicable to Tenant or to all or any portion of the Premises and the Improvements, or either of them, or to the use, occupancy, possession, operation, Maintenance, Alteration, Repair or restoration of any of the Premises and the Improvements, or either of them.

“Approved Designs” has the meaning given it in **Section 7.2.1**.

“Arterial Sewer” has the meaning given it in **Section 7.2.6**.

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

“Barnes Indenture” means the Indenture and Agreement between Albert C. Barnes and Tenant dated December 6, 1922, as amended with all legally required court approvals.

“Base Rent” has the meaning given it in **Section 3.1**.

“Casualty” has the meaning given it in **Section 12.1**.

“City” means the City of Philadelphia, a Pennsylvania corporation and body politic, including but not limited to the Commission, the City’s Department of Public Property, and the City’s other boards, commissions, departments, and agencies.

“City Conduits” means all City-owned public utility lines and conduits that as of the Effective Date run under any portion of the Premises and include but are not limited to the Arterial Sewer.

“City Parties” means the City and its officials, officers and employees.

“Commission” means the Fairmount Park Commission, a departmental commission of the City, including any successor-in-interest to the rights, powers, and duties of the Commission.

“Commonwealth” means the Commonwealth of Pennsylvania.

“Commonwealth Grant Agreement” means a Redevelopment Assistance Capital Grant Agreement between the Commonwealth and Landlord for a Redevelopment Assistance Capital

Grant in the approximate amount of Twenty Five Million Dollars (\$25,000,000) to be used exclusively for the cost of construction of Tenant's Facility.

"Conditions Deadline" has the meaning given it in **Section 2.3**.

"Conditions Period" has the meaning given it in **Section 2.3**.

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

"Default Rate" means that interest rate that is the lesser of (1) four percentage points in excess of the Prime Rate, or (2) the highest rate permitted by Applicable Law. The Default Rate under this Agreement shall change as often as, and when, the Prime Rate changes or changes in Applicable Law occur, as the case may be.

"Demolition Work" has the meaning given it in **Section 5.0.1.2**.

"Economic Opportunity Plan" or **"EOP"** has the meaning given it in **Section 5.5**.

"Effective Date" is the date of this Sublease set forth in the **Preamble**.

"Election Notice" has the meaning given it in **Section 18.1.3.1**.

"Environmental Law" means those Applicable Laws pertaining to Hazardous Substances and Contamination.

"Estoppel Certificate" has the meaning given it in **Section 20.1**.

"Event of Default" has the meaning given it in **Section 14.1**.

"Executive Director" means the Executive Director of Fairmount Park and any official who, by change of law, succeeds to the powers and duties of the Executive Director.

"Existing Lower Merion Facility" has the meaning given it in **Background Paragraph C**.

"Force Majeure Event" means any means any extraordinary act, event, or occurrence

1. that is beyond the reasonable control of a party in its good faith diligence to prevent, control, end, or make contingent arrangements for; and

2. that renders that party unable to perform its obligations under this Sublease despite that party's good faith efforts.

"Hazardous Substances" means any hazardous or toxic substances, materials or wastes, including, but not limited to, those substances, materials, and wastes listed by the Environmental Protection Agency as hazardous substances (40 CFR Part 302); Hazardous Substances as defined

in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et. seq.; Hazardous Substances as defined in the Toxic Substances Control Act, 15 U.S.C. § 26012671; and all substances now or in the future designated as “hazardous substances,” “hazardous materials,” “hazardous wastes,” or “toxic substances” under any other federal, state or local laws or in any regulations adopted and publications promulgated pursuant to those laws, and amendments to all those laws, regulations, and publications, or substances, materials, and wastes which are or become regulated under any applicable local, state or federal law. Without limiting the preceding definition, Hazardous Substances include but are not limited to asbestos, explosives, radioactive material, medical waste, infectious materials, petroleum and petroleum products.

“Imposition” means all taxes (including possessory interest, real property, ad valorem, and personal property taxes), assessments, charges, license fees, municipal liens, levies, excise taxes, impact fees, or imposts, whether general or special, ordinary or extraordinary, which may be directly or indirectly levied, assessed, charged or imposed by any governmental or quasi-governmental authority against, or which may be or become a lien or charge upon, all or any portion of the Premises and the Improvements, or either of them, or upon the leasehold estate created by this Sublease. “Imposition” includes, without limitation, any tax or levy imposed by any governmental or quasi-governmental authority under Applicable Laws in connection with the maintenance of security and fire alarm and fire suppression systems in, on, or about the Premises and the Improvements, or either of them.

“Improvement” and **“Improvements”** have the meaning given them in **Section 7.1.2.**

“Initial Term” has the meaning given it in **Section 2.1.2.**

“Initial Term Commencement Date” has the meaning given it in **Section 2.1.2.**

“Institutional Standards” means, in the following order of priority: (1) any standards imposed by or necessary as a result of the requirements of the Barnes Indenture; and (2) the standards of conduct and business practices customarily engaged in by facilities comparable to Tenant such as the Pennsylvania Academy of the Fine Arts or the Frick Collection in New York City, New York.

“Insurance Proceeds” means any amount received from an insurance carrier, after deducting therefrom the reasonable fees and expenses of collection, including but not limited to reasonable attorneys’ fees and experts’ fees.

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

“Landlord Party” and **“Landlord Parties”** means Landlord, its officials, board members, officers and employees.

“Landlord’s Estate” means all of Landlord’s right, title, and interest in its leasehold estate in the Premises under the Master Lease and under this Sublease and Landlord’s reversionary interest in the Improvements expressly granted by the terms of this Sublease.

“Lease Recognition Agreement” has the meaning given it in **Section 20.3**.

“LEED” has the meaning given it in **Section 7.2.5.2**.

“LWCF” means the Federal Land and Water Conservation Fund Act, P.L. 88-578, September 3, 1964, codified generally at 16 U.S. C. 4601-4, et seq., and includes all regulations duly promulgated pursuant to it.

“Maintain” or **“Maintenance”** have the meaning given them in **Section 8.1.1**.

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

“Material Event of Default” has the meaning given it in **Section 14.1**.

“Mortgage” means all mortgages and other security devices encumbering all or any portion of the Premises or any of Subtenant’s leasehold interest in the Premises, and all renewals, modifications, consolidations, replacements and extensions the mortgages or other security devices.

“Offer Notice” has the meaning given it in **Section 18.1.2.1**.

“Offer Period” has the meaning given it in **Section 18.1.2**.

“Operating Term” has the meaning given it in **Section 2.1.3**.

“Operating Term Commencement Date” has the meaning given it in **Section 2.2**.

“Parking Plan” has the meaning given it in **Section 7.2.7**.

“Partial Taking” has the meaning given it in **Section 13.1.1**.

“Permitted Transfer” has the meaning given it in **Section 16.4**.

“Permitted Use” has the meaning given it in **Section 5.1.2**.

“Premises” has the meaning given it in the **Background Paragraph A**. The Premises include the Improvements but do not include the City Conduits.

“Primary Use” has the meaning given it in **Section 5.1.1**.

“Prime Rate” means the Prime Rate announced from time to time by PNC Bank or its successor-in-interest. If there is no Prime Rate announced by PNC Bank, however, then the Prime Rate is the prime rate announced from time to time by the banking institution in the Commonwealth that has the greatest dollar volume of deposits.

“Prohibited Transfer” has the meaning given it in **Section 16.1**.

“Rent” means all Base Rent and all Additional Rent.

“Repair” or **“Repairs”** has the meaning given it in **Section 8.1.2**.

“Restoration Work” has the meaning given it in **Section 5.0.1.3**.

“Right of Lease” shall have the meaning given to it in **Section 18.1.1**.

“Right of Purchase” shall have the meaning given to it in **Section 18.1.1**.

“Risk Manager” means the Risk Manager of the City and any official succeeding to the duties and authorities of the Risk Manager.

“Sublease” has the meaning given it in the **Preamble**.

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

“Taking” has the meaning given it in **Section 13.1.2**.

“Tax Year” has the meaning given it in **Section 4.1.3**.

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

“Tenant’s Estate” means all of Tenant’s right, title and interest in its subleasehold estate in the Premises, its fee estate in the Improvements during the Term, and its interest under this Sublease.

“Tenant’s Facility” means the art education facility, including galleries and related facilities, that Tenant constructs and operates under and in accordance with this Sublease.

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

“Total Taking” has the meaning given it in **Section 13.1.3**.

“Youth Study Center” means the City-owned and operated youth educational and correctional facility on the Premises as of the Effective Date.

ARTICLE 1 DEMISE OF LAND

1.1 Demise. Beginning on the Initial Term Commencement Date, by this Sublease, Landlord leases to Tenant and Tenant hires from Landlord, the Premises for the Term and subject to all of the provisions set forth in this Sublease. Throughout the Term of this Sublease, Tenant shall have the exclusive possession, care, custody and control of the Premises and the Improvements.

1.2 Condition of Premises. On the Initial Term Commencement Date, Landlord shall deliver possession of the Premises to Tenant subject to the matters listed below to the extent that they affect the Premises or Tenant’s use of the Premises and the Improvements as permitted by this Sublease:

1.2.1 All Applicable Laws, including the zoning of the Premises;

1.2.2 All Impositions, accrued or unaccrued, fixed or not fixed, subject to the prorations set forth in **Section 4.1.3** and **Section 4.1.4**;

1.2.3 Violations of Applicable Laws that might be disclosed by an examination and inspection or search of the Premises conducted by any federal, state, county or municipal department or authority having jurisdiction;

1.2.4 All surface and subsurface conditions of the Premises and Improvements;

1.2.5 All latent and patent defects in the Premises and the Improvements;

1.2.6 City's title to the Premises, and any defects in the City's title, as of the Effective Date; and

1.2.7 The provisions of the Master Lease, subject to the terms of the Lease Recognition Agreement.

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 Primary Use or 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 Initial Term 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 Sublease 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 Sublease creates, grants, or gives to Tenant any legal title, easement or other interest in the Premises other than the leasehold interest created by this Sublease.

1.7 **No Waste.** Tenant shall not cause or knowingly permit any waste or material damage, deterioration, or injury to the Premises or the Improvements. Tenant's development of the Premises as contemplated by this 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 Sublease, this Sublease does not obligate the Landlord or City to appropriate or spend money at any time.

1.9 LWCF Restrictions. Tenant acknowledges that some or all of the Premises may be subject to use restrictions under the LWCF. Accordingly, subject to the provisions of **Section 2.2.7** hereof,

(1) if any portion of the Premises is subject to use restrictions under the LWCF, and

(2) if construction of Tenant's Facility or any other Improvement by Tenant on the Premises is deemed by a federal agency with jurisdiction under the LWCF to be a "conversion" of the land from outdoor public recreation use under the LWCF,

then Tenant shall cooperate fully with the City and use Tenant's good faith, diligent efforts to assist the City in obtaining approval pursuant to the LWCF to remove such use restrictions and to provide "substitute" recreation land for that portion of the Premises deemed converted under the LWCF. Tenant's obligations under this **Section 1.9** include but are not limited to performing a "Section 106" review under the National Historic Preservation Act, if needed. Tenant is not obligated, however, to acquire land itself to substitute for any land deemed converted by Tenant's construction of Tenant's Facility or any other Improvement constructed by Tenant.

1.10 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, and to perform all other necessary, prudent and desirable work on or to the City Conduits, provided that said work shall be performed so as to not unreasonably interfere with the use of any Improvements on the Premises.

ARTICLE 2 TERM

2.1 Term; Demolition Term.

2.1.1 The "**Term**" of this Sublease includes the Initial Term and the Operating Term. The "**Sublease Ending Date**" of this Sublease is the day the Term expires or any earlier day that this Sublease is duly terminated or that this Sublease is surrendered by Tenant in writing.

2.1.2 Initial Term. The "**Initial Term**" of this Sublease shall begin on the fifth (5th) day after such date as the City shall have completely vacated the Premises so that the Premises are free and clear of all leases, tenancies, occupancies and residencies; caused all moveable personal property to be removed therefrom; caused the removal of the existing outdoor art from the Premises; and delivered written notice to Tenant that all of the foregoing has been accomplished (the "**Initial Term Commencement Date**"). Despite any other provision of this Sublease, if the Initial Term Commencement Date has not occurred by August 1, 2008, which date shall not be subject to extension by the Force Majeure provisions of this Sublease, then Tenant may, as its sole and exclusive remedy therefor, at any time thereafter terminate this Sublease upon thirty (30) days prior written notice to Landlord and City unless prior to the expiration of such thirty (30) day period, the Initial Term Commencement Date has occurred. If Tenant terminates this Sublease as provided in this Section 2.1.2, then, despite any other provision of

this Sublease, the Sublease will terminate and expire and Tenant shall have no further obligation to Landlord or the City pursuant to or in connection with this Sublease. The Initial Term expires at the earlier of (i) the commencement of the Operating Term or (ii) the termination of this Sublease pursuant to **Section 2.3** hereof.

2.1.3 Operating Term. The “**Operating Term**” under this Sublease begins on the Operating Term Commencement Date and expires at 5:00 p.m. on the ninety-ninth (99th) anniversary of the Operating Term Commencement Date, unless the Sublease Ending Date occurs prior thereto in accordance with this Sublease.

2.2 Operating Term Commencement Date. The “**Operating Term Commencement Date**” of the Operating Term is the last date that all the conditions precedent listed below (“**Conditions Precedent**”) have been satisfied or have been expressly waived by Tenant in writing to Landlord. Tenant shall exercise good faith diligence and take all reasonable actions within Tenant’s capacity to promote satisfaction of the Conditions Precedent:

2.2.1 The City Council of the City must have enacted ordinances that have become law in form and substance reasonably satisfactory to Tenant as necessary to permit Tenant to construct Tenant’s Facility without the need for any variance, special exception or certificate, or special use permit. The necessary ordinances include, without limitation, an ordinance that rezones those portions of the Premises with non-recreational zoning designations as of the Effective Date to “Recreational” under Chapter 14-700 of the Philadelphia Code. If Tenant does not object in writing to Landlord within thirty (30) days following enactment of an ordinance relating specifically to this Sublease, the Premises, or Tenant’s Facility, then Tenant will be deemed to have approved the ordinance;

2.2.2 Tenant must have obtained a final, unappealable zoning and use registration permit for Tenant’s Facility in form and substance reasonably satisfactory to Tenant. If Tenant does not object in writing to Landlord within thirty (30) days following issuance of any zoning or use registration permit for Tenant’s Facility, then Tenant will be deemed to have approved the permit;

2.2.3 Tenant must have obtained, in form and substance reasonably satisfactory to Tenant, all final, unappealable approvals from the Commission and from the Philadelphia Art Commission that are necessary for Tenant to commence and complete construction of Tenant’s Facility. If Tenant does not object in writing to Landlord within thirty (30) days following any approval from the Commission or from the Philadelphia Art Commission relating to Tenant’s commencement or construction of Tenant’s Facility, then Tenant will be deemed to have approved the approval;

2.2.4 Tenant must have obtained a final, unappealable, order, decree, or other approval from the Court of Common Pleas, Orphans’ Court Division, of Montgomery County, Pennsylvania, in form and substance reasonably satisfactory to Tenant, for Tenant to enter into and be bound by this Sublease. If Tenant does not object in writing to Landlord within thirty (30) days following any order, decree, or other approval from the Orphans’ Court relating to this Sublease, the Premises, or Tenant’s Facility, then Tenant will be deemed to have approved the

order, decree, or approval;

2.2.5 There must be no pending litigation or bona fide threat of litigation or claim (as evidenced by a writing asserting a threat of litigation or claim), that (a) challenges or seeks to prevent the execution or performance of this Sublease or the Master Lease or that (b) otherwise challenges or seeks to prevent the exercise of Landlord's or Tenant's rights, or the performance of Landlord's or Tenant's obligations, under this Sublease;

2.2.6 The Commonwealth and Landlord must have entered into a Commonwealth grant agreement for an approximate amount of Twenty Five Million Dollars (\$25,000,000), and Landlord must be ready, willing, and able to enter promptly into a sub-grant agreement with Tenant related to the grant in form and substance reasonably satisfactory to Tenant (as evidenced by Tenant's written approval thereof). If Tenant does not object in writing to or request changes to the form of sub-grant agreement within sixty (60) days following Landlord's delivery of it to Tenant, then Tenant will be deemed to have approved the form of sub-grant agreement;

2.2.7 (A) The City must have obtained written confirmation from the applicable authority(ies) that the Premises are not subject to any use restrictions under the LWCF or that construction of any Improvements by Tenant will not constitute a conversion of outdoor public recreation space under the LWCF, or (B) if the Premises are subject to any use restrictions under the LWCF, Tenant must have reasonably determined that none of the LWCF restrictions unreasonably interfere with Tenant's intended design of Tenant's Facility or intended use of the Premises. If Tenant does not notify Landlord and City in writing by the first anniversary of the Initial Term Commencement Date that LWCF restrictions unreasonably interfere with Tenant's intended design of Tenant's Facility or intended use of the Premises, then Tenant will be deemed to have waived the condition set forth in this **Section 2.2.7**;

2.2.8 Tenant must have obtained sufficient, readily available funds to proceed with and complete the construction of Tenant's Facility. For purposes of this **Section 2.2.8**, if (A) the Commonwealth of Pennsylvania authorizes the release of funds under the Redevelopment Assistance Capital Grant for the benefit of Tenant's Facility and (B) the Commonwealth and Landlord enter into a written grant agreement under which Landlord will receive the grant funds and sub-grant them to Tenant, then the amount of the grant will apply to the total amount of Tenant's readily available funds;

2.2.9 (1) Tenant, after consultation with the Council member for Philadelphia City Council's Fifth District, must have submitted, and the President of the Commission and the Mayor must have approved, the Parking Plan to be submitted by Tenant pursuant to **Section 7.2.7** hereof, and (2) after Tenant's consultation with the Fifth District Council member, Tenant, the President of the Commission, and the Mayor must have mutually approved one or more of the alternatives set forth in the Parking Plan to address the parking needs of Tenant's Facility which are to be implemented by Tenant at Tenant's sole cost and expense.

2.2.10 Tenant must have performed the Demolition Work and Restoration Work in accordance with **Section 5.0**.

2.3 Failure of Conditions. If any Condition Precedent has not been fulfilled or satisfied on or before the fourth anniversary of the Effective Date (“**Conditions Period**”), then Tenant may, on or before 5:00 p.m. on the tenth (10th) day following the end of the Conditions Period (“**Conditions Deadline**”),

2.3.1 terminate this Sublease by providing written notice to the Landlord and the City of the unfulfilled condition and Tenant’s intent to terminate the Sublease, and this Sublease will terminate on the 30th day following the receipt of Tenant’s notice by Landlord and the City;

2.3.2 waive fulfillment or satisfaction of the Condition Precedent by written notice to Landlord and the City (provided that Tenant shall not be entitled to waive the condition in Section 2.2.8 unless Tenant has satisfied the requirements of Section 7.2.2, nor shall Tenant be entitled to waive the condition in Section 2.2.9 unless Tenant has satisfied the requirements of Section 7.2.7 (other than the requirements of the last sentence of Section 7.2.7)); or

2.3.3 if Landlord and Tenant agree to do so in their respective sole discretions, enter into a written agreement with Landlord to extend the Conditions Period to a date mutually acceptable to Landlord and Tenant, and upon the execution of such agreement the Conditions Deadline will extend to 5:00 p.m. on the 10th day following expiration of the extended Conditions Period.

2.3.4. If before the Conditions Deadline Tenant does not in accordance with the provisions of **Sections 2.3.1, 2.3.2, and 2.3.3** above either (1) provide notice of its intent to terminate this Sublease, (2) waive fulfillment or satisfaction of the unfulfilled Conditions Precedent, or (3) enter into a written agreement with Landlord to extend the Conditions Period, then this Sublease will automatically terminate on the Conditions Deadline.

2.4 No Obligations Following Termination. If this Sublease terminates pursuant to the provisions of **Section 2.3** or **Section 2.5**, then neither Landlord nor Tenant will have any further obligation under this Sublease, or liability to the other under or related to this Sublease, following the Sublease Ending Date except (1) those liabilities that arise before the Sublease Ending Date (2) those liabilities and obligations that this Sublease expressly provides survive expiration or earlier termination of the Sublease, and (3) Subtenant shall restore the Premises in accordance with **Section 5.0.8**.

2.5 Effectiveness of Sublease. This Sublease is in full force and effect from the Effective Date, provided that, except for Tenant’s obligations under Section 2.2, nothing in this Sublease obligates Tenant to spend money with respect to the Premises prior to the Initial Term Commencement Date. Tenant acknowledges and agrees that the City has the exclusive right to use, occupy, and control the Premises prior to the Initial Term Commencement Date.

2.6 Confirmation of Operating Term Commencement Date. When the Operating Term Commencement Date has occurred, Landlord and Tenant shall promptly execute and acknowledge a written confirmation of the Operating Term Commencement Date in a form reasonably approved by Tenant and Landlord.

ARTICLE 3 RENT

3.1 Base Rent. As base rent for the Term (“**Base Rent**”), Tenant has paid to Landlord the sum of Ten Dollars (\$10.00). Landlord acknowledges receipt of Tenant’s payment of the Base Rent. The nominal Base Rent under this Sublease serves the public purpose of this Sublease.

3.2 Additional Rent. Tenant must pay Additional Rent as provided elsewhere in this Sublease by the date stated in the relevant provision, or if no date is stated, then when due or within thirty (30) days after the date on which Tenant receives a written invoice the amount owed.

3.3 General Provision Regarding Payment of Rent. Tenant shall pay all Rent promptly when due, without deduction, recoupment or setoff of any amount for any reason whatsoever. Tenant’s covenant and agreement to pay Rent is for all purposes a separate and independent covenant from Tenant’s other rights and obligations under this Sublease.

3.4 Net Lease.

3.4.1 This Sublease is what is commonly called a “Net Lease,” and throughout the Term of this Sublease, Landlord shall receive the Rent payable to it free and clear of any and all Impositions, taxes, liens, charges, deductions or expenses of any nature whatsoever in connection with the ownership, operation, maintenance, repair, occupancy or use of the Premises and the Improvements.

3.4.2 Without limiting **Section 1.8**, throughout the Term of this Sublease, the Landlord Parties and City Parties (1) are not responsible for any costs, expenses, or charges of any kind or nature respecting the Premises or the Improvements, and (2) are not required to render any services of any kind to Tenant or to the Premises or the Improvements.

3.4.3 During the Term of this Sublease, Tenant assumes all risks of damage to or destruction of the Premises and Improvements by fire or other casualty, and every other event which might deprive Tenant of the use or occupancy of the Premises or the Improvements, notwithstanding any statutes or laws to the contrary now or in the future in effect, subject only to the provisions of this Sublease.

3.4.4 Without limiting the generality of the foregoing provisions of this **Section 3.4**, except as otherwise expressly provided in **Articles 2, 12 and 13** or elsewhere in this Sublease, Tenant does not have any right to, and shall not, terminate this Sublease or be entitled to abatement or reduction of Rent, nor are the obligations and liabilities of Tenant under this Sublease affected in any way by any of the following:

3.4.4.1 Any defect in, damage to, destruction of, or any taking of, any part of the Premises or of the Improvements;

3.4.4.2 Any restriction of or interference with the use of the

Premises or the Improvements by governmental authorities;

3.4.4.3 Any matter affecting title to, or any eviction by governmental authorities or third parties from, the Premises or the Improvements; or

3.4.4.4 Any proceeding relating to Landlord or City, or action taken with respect to this Sublease, by any trustee or receiver of Landlord or the City or by any court in any proceeding.

ARTICLE 4 PAYMENT OF TAXES AND OTHER CHARGES

4.1 Payment of Impositions.

4.1.1 Beginning at the start of the Initial Term and continuing for the entire Term of this Sublease, Tenant shall pay and discharge or cause to be paid and discharged all Impositions, if any, before delinquency and before any fine, interest or penalty shall be assessed by reason of its nonpayment.

4.1.2 If at any time during the Term the methods of taxation prevailing at the Initial Term Commencement Date are altered so that in lieu of any Imposition there is levied, assessed or imposed an alternate tax or charge, however designated or characterized, then the alternate tax or charge is an Imposition for the purpose of this **Section 4.1** and Tenant must pay and discharge that Imposition as and when provided by this **Section 4.1**.

4.1.3 If the start of the Initial Term is a day other than the first day of a “**tax**” or “**fiscal**” year, i.e., July 1 (a “**Tax Year**”), Landlord and Tenant shall prorate all Impositions so that Tenant shall be responsible only for those Impositions payable in connection with the Premises and Improvements on and after the start of the Initial Term. Landlord and Tenant will base the proration on the ratio that the number of days in the portion of the Tax Year bears to 365. Landlord and Tenant will similarly prorate payment of Impositions with respect to the final Tax Year.

4.1.4 Notwithstanding the provisions of **Section 4.1** above, if prior to the start of the Initial Term or after the Sublease Ending Date, any Imposition is not payable with respect to the Premises or the Improvements because the City or the Landlord is exempt under Applicable Law from paying the Imposition, then that Imposition will not be prorated, and Tenant shall pay 100% of that Imposition attributable to the applicable Tax Year to the extent that Tenant is not exempt under Applicable Law from paying the Imposition or to the extent necessary to relieve the Landlord and City of all obligation to pay the Imposition.

4.2 **Contesting Impositions; Exemption.** If Tenant desires to contest or otherwise review by appropriate legal or administrative proceeding any Imposition, Tenant shall give Landlord written notice of its intention to contest the Imposition. After giving the notice to Landlord, Tenant will not have committed an Event of Default under this Sublease by reason of the non-payment of the Imposition if Tenant has promptly obtained and furnished to the applicable taxing authority (including the City, as the case may be) a bond or other security to

the extent required by Applicable Law. Tenant shall pursue the contest or other proceeding with reasonable diligence, solely at Tenant's expense, and free of expense to the Landlord Parties and City Parties. Tenant shall promptly pay the amount finally determined to be due, if any, together with all related costs, expenses, interest, and penalties. Nothing in this Sublease prohibits Tenant from seeking or obtaining an exemption from any Imposition in accordance with Applicable Law.

4.3 Utilities. Tenant shall pay before delinquency for all water, gas, electricity, and other public or private utilities used upon or furnished to the Premises and the Improvements during the Term. Tenant shall make those payments directly to the utility providers. Tenant shall take all steps necessary to arrange for receiving bills for utility service. Tenant is solely responsible for all utilities and utility service provided to the Premises and the Improvements during the Term, including all interest and penalties arising from any late payment of bills and invoices for utility service, regardless of the cause or reason for the late payment. The Landlord and the City are not responsible in any manner or to any extent for providing utilities or utility service to Tenant, the Premises, or the Improvements.

4.4 Payment by Landlord. Unless Tenant is contesting any Impositions as provided in **Section 4.2** above, Landlord may, in its sole discretion, at any time after the date any Imposition is delinquent, give written notice to Tenant specifying the delinquency. If Tenant continues to fail to pay or contest the Imposition as set forth above, then at any time after ten (10) days from Tenant's receipt of Landlord's written notice, Landlord may, in its sole discretion, pay the Imposition specified in Landlord's notice. Upon demand by Landlord, Tenant shall reimburse and pay Landlord all amounts paid or expended by Landlord in the payment of the Imposition, with interest at the Default Rate from the date Landlord made the payment until repaid by Tenant.

4.5 Transfer Taxes. Tenant shall pay all transfer taxes, if any, that may be due or payable in connection with (1) the execution and delivery of this Sublease; (2) the recording of a memorandum of this Sublease, or (3) either of them. Tenant is not liable for any transfer taxes that may be due or payable in connection with the execution or delivery of the Master Lease or the recording of any memorandum of the Master Lease.

ARTICLE 5 USES REQUIRED AND PROHIBITED; COMPLIANCE WITH APPLICABLE LAWS; ECONOMIC OPPORTUNITY PLAN

5.0 Demolition of Youth Study Center.

5.0.1. Promptly following the start of the Initial Term, Tenant shall, at its sole cost and expense, and in accordance with Applicable Laws,

1. perform all environmental remediation related to the Youth Study Center,
2. demolish the Youth Study Center and dispose of all demolished material (collectively with the environmental remediation, the "**Demolition Work**"), and

3. restore the Premises to clean, attractive, safe open space covered with grass and in condition reasonably satisfactory to the Executive Director (“**Restoration Work**”) unless Tenant intends to proceed with construction of Tenant's Facility promptly after completion of the Demolition Work.

5.0.2. Tenant shall confine its Demolition Work to as limited a portion of the Premises as (1) is consistent with the efficient and safe conduct of the work, and (2) minimizes to the extent reasonably feasible interference with the use by the public of that portion of the Premises that constitutes part of Fairmount Park as of May 24, 2007.

5.0.3.

1. Without limiting Tenant’s indemnification obligations under **Section 10.1**, Tenant shall indemnify, defend, and hold harmless the Landlord Parties and City Parties from and against all losses, claims, suits, actions, damages, expenses (including but not limited to attorneys’ and experts’ fees and litigation costs), and liabilities, 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), that occur or arise, in whole or in part, directly or indirectly, as a result of or in connection with Tenant’s Demolition Work and the Restoration Work, or either of them.

2. If any action or proceeding is brought against either or both of the Landlord Parties and City Parties relating to any matter for which they have been indemnified by Tenant, then, upon written notice from an indemnified party to Tenant, Tenant shall, at its sole cost and expense, promptly resist or defend such action or proceeding by counsel approved by the indemnified party in writing. Tenant is not obligated to obtain the indemnified party’s approval in each and every instance where the claim is resisted or defended by counsel of an insurance carrier obligated to resist or defend such claim. Without limiting the generality of **Section 24.13**, the liabilities and obligations of Tenant under this **Section 5.0.3** survive the expiration or termination of this Sublease.

5.0.4. Before commencing the Demolition Work and the Restoration Work, Tenant shall provide evidence reasonably satisfactory to the City of Philadelphia Risk Manager and Landlord's President that Tenant and its contractors and subcontractors performing the work maintain liability insurance in amounts reasonably satisfactory to the Risk Manager, maintain workmen’s compensation insurance in compliance with Applicable Law, and maintain other customary insurance reasonably satisfactory to the Risk Manager and Landlord’s President.

5.0.5. Tenant shall perform the Demolition Work and the Restoration work in a good and workman like manner and shall diligently pursue the work to completion.

5.0.6. Following completion of the Demolition Work and the Restoration Work, Tenant shall keep and maintain the Premises clean, safe, attractive, and, as to that portion of the Premises that constitutes part of Fairmount Park as of May 24, 2007, open to the general public throughout the remainder of the Initial Term. Any temporary fencing to enclose the site of the

Demolition Work shall be made by Tenant and must be reasonably satisfactory in appearance to the Executive Director.

5.0.7. Prior to the Operating Term Commencement Date, Tenant shall not construct any Improvements on the Premises (excluding any temporary improvements necessary for the proper conduct of the Demolition Work).

5.0.8. If this Sublease is terminated prior to, or without occurrence of, the Operating Term Commencement Date, Tenant shall at its sole cost and expense expeditiously restore the Premises to open park space with landscaping reasonably satisfactory to the Commission and approved by the Commission by resolution.

5.0.9. Without limiting **Section 1.8**, Tenant acknowledges and agrees that Landlord and City have no obligation to appropriate or spend any money for or in connection with the Demolition Work or the Restoration Work. Tenant has no claim against the Landlord or City for any costs for, arising under, or related to, the Demolition Work or the Restoration Work.

5.0.10. The provisions of this **Section 5.0** survive the Sublease Ending Date.

5.1 Use Required; Use Permitted. Except prior to and during construction of Tenant's Facility and during periods of Alteration or Repair of Tenant's Facility in accordance with this Sublease, or as otherwise expressly permitted by this Sublease, beginning on the Operating Term Commencement Date and throughout the remainder of the Term Tenant shall use the Premises and the Improvements only as follows:

5.1.1 Tenant shall itself operate the Premises and the Improvements as and for an art education facility, including art galleries to display the Barnes Collection ("**Primary Use**");

5.1.2 Tenant may operate the Premises and Improvements for other uses ancillary to and consistent with an art education facility, including without limitation the following (collectively with the Primary Use, the "**Permitted Use**"):

1. permanent collection galleries,
2. orientation space,
3. temporary exhibition galleries,
4. arboreta,
5. curatorial space,
6. conservation space,
7. space for art collection management,
8. classrooms and other educational space,
9. auditoriums,
10. libraries,
11. event space,
12. public entry space,
13. food service space,
14. retail space,

15. offices and other administrative space,
16. storage space, and
17. parking.

5.1.3 Tenant acknowledges and agrees that its obligation to occupy and use the Premises for the Primary Use under this Sublease

1. is a material and substantial consideration to Landlord under this Sublease and the inducement to Landlord to sublease the Premises to Tenant for nominal Rent;
2. was a material inducement to the City to decide, as a matter of public policy and for the public benefit, to lease the Premises to Landlord for nominal rent under the Master Lease, under which Landlord is obligated to enter into this Sublease, 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 the Master Lease.

Further, Tenant acknowledges and agrees that Tenant's failure to use and occupy the Premises for the Primary Use as required by this Sublease would cause actual, direct, and substantial detriment to the Landlord under this Sublease and to the City under the Master Lease. Therefore, from and after completion of Tenant's Facility, and except only during periods of any Alteration or Repair, or as otherwise expressly permitted by this Sublease, Tenant shall not cease using the Premises for the Primary Use. The City is a third party beneficiary of this **Section 5.1.3**.

5.2 Uses Prohibited Generally.

5.2.1 Tenant shall not at any time use all or any portion of the Premises or Improvements for any purpose other than the Permitted Use except to the extent expressly authorized by this Sublease. Tenant shall not at any time permit all or any portion of the Premises or Improvements to be used in any manner that would make possible a claim of adverse usage or adverse possession by the public or anyone else whatsoever or of implied dedication of all or any portion of the Premises or of the Improvements.

5.2.2 Tenant shall not knowingly permit any act to be done or any condition to exist in, on, or about all or any portion of the Premises or Improvements that may constitute a public or private nuisance or that may make void or voidable any insurance then in force with respect to all or any portion of the Premises or Improvements, or Tenant's use and operation thereof.

5.3 Tenant Shall Comply With Applicable Laws; Notice of Proceedings Regarding Indenture.

5.3.1 Throughout the Term, Tenant shall promptly comply with all Applicable Laws in Tenant's use, occupation, control and enjoyment of the Premises and Improvements.

5.3.2 Tenant may, at its own cost and expense, contest or review by appropriate legal or administrative proceeding the validity or legality of any Applicable Laws. During such

contest Tenant may refrain from complying with the Applicable Law that Tenant is contesting if compliance with such Applicable Law may legally be held in abeyance without subjecting Landlord or any of the other Landlord Parties or City Parties to any liability, civil or criminal, of whatsoever nature for failure to comply with such Applicable Law and without incurring a lien, charge or liability against the Premises, the Improvements or Landlord's Estate or the City's estate in the Premises and the Improvements. Tenant may contest the validity or legality of any Applicable Law only if Tenant prosecutes such contest with reasonable due diligence.

5.3.3 Throughout the Term, Tenant shall promptly provide copies to Landlord and the City of all petitions, pleadings, applications, replies, answers, affidavits, declarations, memorandums of law, briefs, orders, decrees, and other documents filed with or issued by the Court of Common Pleas, Orphans' Court Division, or with or by any other court, relating to any of the following (but excluding claims for personal injury or property damage or routine commercial litigation): (A) The charter, articles of incorporation, by-laws and programs of Tenant; (B) the Barnes Indenture; (C) the Barnes Collection; or (D) Tenant's Facility.

5.3.4 Throughout the Term, Tenant shall promptly provide copies to Landlord and the City of all citations, summonses, reports, or other notices (however characterized or labeled) received by Tenant that the Premises or any part of the Premises, some or all of Tenant's Facility or any other Improvements, or Tenant's use, occupancy, or operations on the Premises or any portion of the Premises, violate any Applicable Laws, including but not limited to any Environmental Law.

5.4 Tenant Responsible for Safe Use of Premises and Improvements. Tenant shall promptly take all reasonable actions consistent with Institutional Standards to

5.4.1 safely possess, occupy, use, Maintain, and Repair the Premises and the Improvements,

5.4.2 construct, reconstruct, manage, operate, Maintain, Repair, and replace the Improvements,

5.4.3 take all actions necessary and prudent to ensure the safety of persons and property in and on the Premises; and

5.4.4 fulfill Tenant's obligations under this Sublease.

5.5 Economic Opportunity Plan.

5.5.1 Tenant has submitted to the City and the City has approved an economic opportunity plan ("**Economic Opportunity Plan**") setting forth Tenant's goals with respect to the participation of Minority, Female and Disabled Owned Disadvantaged Business Enterprises in the construction, Alteration, Maintenance, Repair, and operation of Tenant's Facility and other Improvements and with respect to the employment of disadvantaged, minority and female persons. Tenant's Economic Opportunity Plan is attached and incorporated into this Sublease as **Exhibit G**.

5.5.2 Tenant shall comply with its Economic Opportunity Plan in all phases of (1) Tenant's design, engineering, and construction of Tenant's Facility and the Improvements, (2) Tenant's Alteration, Maintenance, and Repair of Tenant's Facility, all other Improvements, and other parts of the Premises, and (3) Tenant's operation of Tenant's Facility, the Improvements, and other parts of the Premises, including but not limited to operation in connection with the Primary Use and Permitted Use.

5.6 Reports to City. Throughout the Term, Tenant shall promptly provide to the City copies of all of Tenant's filings and submissions to federal and Commonwealth of Pennsylvania taxing authorities, including but not limited to annual tax returns or reports. Throughout the Term, Tenant shall promptly provide to the City copies of all audits of Tenant's finances.

5.7 Affordability. Tenant acknowledges that pursuant to paragraph 30 of the Barnes Indenture, Tenant's Facility is to be operated as an art education facility and galleries accessible to students and to persons of all means. Accordingly, Tenant shall make rules and regulations to ensure that persons of all means have affordable access to the galleries in Tenant's Facility displaying the Barnes Collection. Tenant agrees to submit its rules and regulations regarding affordable access as described above (and any material amendments to those rules and regulations) to the City for its comment at least 30 days prior to implementing them.

ARTICLE 6

FAIRMOUNT PARK: LANDSCAPING, SIGNS, COMMISSION MEETINGS

6.1 Non-Invasive Species. Throughout the Term, Tenant shall not plant or otherwise promote on the Premises any species of tree, flower, or other vegetation that is invasive in nature so that it displaces native species of vegetation. For purposes of this **Section 6.1**, an invasive species is any plant identified or listed as invasive with respect to the native species of vegetation of the Delaware Valley by the Commonwealth of Pennsylvania Department of Agriculture, the National Park Service and United States Fish and Wildlife Service, or the United States Department of Agriculture (or any successor agency or department to any of them).

6.2 Signs and Promotional Materials. Throughout the Term, Tenant shall maintain on the Premises at least one reasonably prominent sign oriented toward Benjamin Franklin Parkway that explains or states that Tenant's Facility is located on Fairmount Park land. Throughout the Term, Tenant shall use good faith efforts to include in all its written promotional and written advertising materials and on its web site a reasonably prominent statement that Tenant's Facility is located on Fairmount Park land.

6.3 Commission Meetings.

6.3.1 Tenant shall permit the Commission to use Tenant's Facility free of charge once each year for a public meeting of the Commission. Tenant is not responsible for the cost of conducting the meeting, except only the costs of utilities and routine building operation and cleanup during and after the event.

6.3.2 Tenant shall permit the Commission to use the Premises and Tenant's Facility free of charge once each year to hold a fundraising event for the benefit of Fairmount Park. Tenant is not responsible for the cost of any food or beverages or other costs for the fundraising event, except only the costs of utilities and routine building operation and cleanup during and after the event.

ARTICLE 7 INITIAL CONSTRUCTION; ALTERATIONS

7.1 Definitions.

7.1.1 As used in this Sublease, the capitalized words "**Alteration**" and "**Alterations**" mean the change to or modification of the exterior of an Improvement following its initial construction, or the change to or modification of any exterior portion of the Premises, including but not limited to construction, additions, repairs, renovations, replacements, and reconstruction. "Alteration" and "Alterations" do not include changes to the interior of any Improvement.

7.1.2 As used in this Sublease, the capitalized words "**Improvement**" and "**Improvements**" mean any and all existing and future structures and physical developments on and about the Premises, including but not limited to Tenant's Facility and exterior signs. "Improvement" and "Improvements" do not include

7.1.2.1 the Barnes Collection, other works of art, and any other personal property now or in the future located within any Improvement;

7.1.2.2 Tenant's furniture, fixtures and equipment; and

7.1.2.3 City Conduits.

7.2 Approval of Designs; Construction of Improvements; Tenant's Failure to Commence.

7.2.1 Tenant shall not commence construction of Tenant's Facility or any other Improvements unless and until Tenant has obtained the approval of the Commission, by resolution, of all the exterior elements of the design of Tenant's Facility and all the exterior elements of the other Improvements that Tenant intends to construct, including but not limited to fences and any gates that could be used to close off public access from landscaped portions of the Premises ("**Approved Designs**"). The Commission's approval of the Approved Designs is not approval of Tenant's designs otherwise required under Applicable Laws, including but not limited to approval of the City of Philadelphia Art Commission.

7.2.2 Tenant shall not commence construction of Tenant's Facility or any other Improvements unless and until Tenant has provided evidence reasonably satisfactory to the

Commission that Tenant has sufficient, readily available funds (not less than \$100 million unless the cost of construction of Tenant's Facility is reasonably projected to be less than \$100 million) to proceed with and complete the construction of Tenant's Facility. For purposes of this **Section 7.2.2**, if (A) The Commonwealth of Pennsylvania authorizes the release of funds under the Redevelopment Assistance Capital Grant for the benefit of Tenant's Facility and (B) the Commonwealth and Landlord enter into a written grant agreement under which Landlord will receive the grant funds and sub-grant them to Tenant, then the amount of the grant will be considered part of Tenant's readily available funds;

7.2.3 Tenant shall, at its sole cost and expense, diligently develop the Premises and construct Tenant's Facility and other Improvements in strict accordance with the Approved Designs.

7.2.4 If Tenant has not commenced construction of Tenant's Facility by the first (1st) anniversary of the Operating Term Commencement Date, then Landlord may terminate this Sublease by delivering written notice to Tenant. If Landlord delivers a termination notice to Tenant under this **Section 7.2.4**, this Sublease will terminate on the sixtieth (60th) day after the date Landlord delivers the notice, unless prior to the last day of the 60-day period Tenant commences construction of Tenant's Facility and pursues the construction diligently to completion. If Landlord terminates this Sublease under this **Section 7.2.4**, then upon termination neither Landlord nor Tenant will have any further obligation under this Sublease, or liability to the other under or related to this Sublease, except (1) for those liabilities that arise before the termination date, (2) those liabilities and obligations that this Sublease expressly provides survive expiration or earlier termination of the Sublease, and (3) Tenant shall restore the Premises in accordance with **Section 5.0.8**.

7.2.5 Environmental Conservation and Sustainable Building Elements.

(1) Tenant acknowledges that the requirements in the Barnes Indenture and in Tenant's bylaws regarding arboriculture education reflects a commitment to sensitivity about environmental matters and environmental stewardship. Moreover, Tenant acknowledges that by virtue of its location on Benjamin Franklin Parkway, Tenant's Facility can serve as a prominent example of environmentally sensitive design for similar facilities. Accordingly, Tenant shall include environmentally sensitive design values as a criteria in its selection of an architect to design Tenant's Facility.

(2) In designing Tenant's Facility and other Improvements, Tenant shall incorporate elements of what are now commonly called "green building designs," to conserve energy and use natural resources efficiently, and shall make a good faith effort to obtain at least the minimum certification under the Leadership in Energy and Environmental Design ("LEED") design and construction standards. Tenant may obtain a waiver from the requirements of this Section 7.2.5.2 if Tenant demonstrates to the reasonable satisfaction of the Mayor of Philadelphia that unique requirements of Tenant's Facility warrant departure from minimum LEED standards. The waiver may be issued only by the Mayor in

writing. Notwithstanding the foregoing, nothing contained herein shall require Tenant to subordinate its obligations to comply with the Barnes Indenture and to preserve and secure the Barnes Collection.

7.2.6 Arterial Sewer.

7.2.6.1 During the course of the Demolition Work and the Restoration Work, Tenant shall implement measures reasonably satisfactory to the Philadelphia Water Department to protect the City arterial sewer that extends under the Premises from 20th Street to 21st Street (the "**Arterial Sewer**"), including, at Tenant's sole cost and expense, a pre-demolition video examination thereof. In addition, Tenant shall not commence construction of Tenant's Facility or any other Improvements until Tenant has submitted, and the Philadelphia Water Department has approved, which approval shall not be unreasonably withheld or delayed, plans showing that the foundations of Tenant's Facility and any Improvements are structurally independent of the Arterial Sewer and will not adversely affect the Arterial Sewer. Tenant shall, at its sole cost and expense, also perform a video examination of the Arterial Sewer after it completes construction of Tenant's Facility. After completing each video, Tenant shall promptly provide a copy of the video to the Philadelphia Water Department.

7.2.6.2 If Tenant or its contractors cause any damage to the Arterial Sewer, then Tenant shall (1) promptly pay, in advance, all costs and expenses for the City to repair all damage caused by Tenant or its contractors to the Arterial Sewer, or (2) if requested by Tenant and permitted by the City Water Department Commissioner, at Tenant's sole cost and expense, repair all damage caused by Tenant or its contractors to the Arterial Sewer, to the reasonable satisfaction of the City Water Department Commissioner.

7.2.7 Parking Plan. Prior to Tenant's construction of Tenant's Facility or any other Improvements, Tenant shall, after consulting with the Council member for Philadelphia City Council's Fifth District, submit a study of the parking needs for all of the employees, patrons and guests of Tenant's Facility ("**Parking Plan**") that is satisfactory to the President of the Fairmount Park Commission and the Mayor, each in their reasonable discretion. The Parking Plan must provide one or more alternatives to address the parking needs for all of the employees, patrons and guests of Tenant's Facility. Tenant shall not commence construction of Tenant's Facility or any other Improvements until, after Tenant consults with the Fifth District Council member, Tenant, the President of the Commission, and the Mayor have mutually approved, each in their respective reasonable discretion, one or more alternatives set forth in the Parking Plan to address the parking needs of Tenant's Facility. Throughout the Operating Term of this Sublease, Tenant shall implement such mutually approved alternative (or alternatives) to address the parking needs of Tenant's Facility, at Tenant's sole cost and expense.

7.3 Alterations and Demolition.

7.3.1 Following Tenant's initial construction of Tenant's Facility and other Improvements, throughout the remainder of the Term Tenant shall obtain the prior approval of the Commission, by resolution, before making any Alterations to Tenant's Facility or any other

Improvements. Despite the immediately preceding sentence, Tenant may make Alterations to the Improvements, including but not limited to Tenant's Facility, without obtaining the Commission's or Landlord's consent or notifying the Commission or Landlord, only for modifications that (1) do not change the exterior appearance of the Improvements, and (2) otherwise comply with this Sublease and Applicable Laws.

7.3.2 Tenant may make alterations, additions, decorations, or other improvements to the interior of any Improvement (so long as they are not readily visible from any area outside of the Premises) without the consent or approval of the Commission or Landlord. Tenant may install, replace, and remove fixtures and equipment in the Improvements without the consent or approval of Landlord or the Commission and without notice to Landlord or the Commission. Tenant shall obtain the approval of the Commission, by resolution, before making any alteration, addition, decoration, or other improvement to the interior of any Improvement that is readily visible from outside the Premises.

7.3.3 Without the Commission's approval by resolution, Tenant shall not demolish, in whole or in part, any Improvement constructed on the Premises, except for the Improvements located on the Premises on the Effective Date and except as required to carry out any Alteration permitted by the Commission in accordance with this Sublease.

7.4 Title to Improvements: Delivery of Plans. All Improvements constructed or installed upon the Premises by Tenant at any time prior to the Sublease Ending Date shall be and remain the property of Tenant before the Sublease Ending Date. Upon the Sublease Ending Date, title to the Improvements shall, subject to the provisions of **Article 15** below, automatically vest in, and become the property of, the City, and Tenant agrees to execute and deliver such documents as are reasonably requested by the City to evidence such transfer of title. On or before the Sublease Ending Date, Tenant shall deliver to Landlord the "as-built" plans, specifications, drawings and other documentation relating to the construction and/or physical operation of the Improvements then existing on the Premises. Tenant's liabilities and obligations under this **Section 7.4** survive the Sublease Ending Date.

7.5 Liens.

7.5.1 If any mechanics' or other lien or claim is filed against Landlord's Estate or the City's estate in the Premises or the Improvements other than for labor or material furnished or to be furnished by or at the request of any Landlord Party or City Party, then Tenant shall, at its sole cost and expense, cause the same to be discharged by payment, bond or otherwise within thirty (30) days after the date on which Tenant receives written notice of the filing thereof. If Tenant fails to cause the same to be discharged of record within such thirty (30) day period, Landlord may cause same to be discharged by payment, bond or otherwise, without investigation as to the validity thereof or as to any counterclaims, offsets or defenses thereto, and Tenant shall repay Landlord on demand such amounts and all costs relating thereto as Additional Rent.

7.5.2 All persons dealing with Tenant are placed on notice by this Sublease that such persons shall not look to Landlord or the City or to Landlord's or the City's respective

credit or assets (including their respective 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 any person claiming by, through or under Tenant). Tenant has no power, right or authority to subject Landlord's Estate or the City's estate in the Premises and the Improvements to any mechanic's or materialman's lien or claim of lien whatsoever.

7.6 Controlling Erosion and Debris During Construction; Protecting Trees. During Tenant's demolition of the Youth Study Center, Tenant's initial construction of Tenant's Facility and other Improvements, and Tenant's performance of all Alterations and other work on the Improvements and the Premises performed by or on behalf of Tenant (or any person claiming by, through or under Tenant), Tenant shall

7.6.1 take commercially reasonable measures to minimize erosion in, on and about the Premises,

7.6.2 take all commercially reasonable measures to minimize the dirt, dust, litter, construction materials, and debris that blow, issue, or flow from the Premises, or from construction vehicles that enter or leave the Premises, onto or into roads, storm water inlets, or any property outside the Premises, and

7.6.3 comply with all Applicable Laws, and any condition lawfully imposed by the City in its municipal capacity (as opposed to its capacity as landlord under the Master Lease) when issuing approvals required by Applicable Laws for such construction.

7.6.4 Tenant shall not cut down or remove any trees in connection with the Demolition Work or the Restoration Work without the prior written approval of the Executive Director. In addition, Tenant's design plans submitted to the Commission for approval under **Section 7.2.1** shall include identification of all trees that Tenant's proposes to cut down in connection with construction of Tenant's Facility. Tenant shall not cut down any trees not identified for removal in the Approved Designs. For all trees that will remain after construction of Tenant's Facility under the Approved Designs, Tenant shall, during the course of construction, maintain a protective fence or fences at the drip lines of such trees to protect such trees. Tenant shall not permit any construction activity, including but not limited to movement of vehicles, material storage, and construction trailer placement, within the protective fencing or that might otherwise damage or injure any protected tree or its roots.

7.7 Landlord Has No Obligation to Pay for Initial Construction or Alterations. Tenant acknowledges and agrees that, throughout the Term, Landlord and City have no obligation to pay for any cost or expense for the initial construction of Tenant's Facility or any other Improvements, or for any Alterations or other modifications to the Premises or Improvements.

7.8 Manner of Work. Tenant shall cause construction of the Improvements, including but not limited to Tenant's Facility, all Alterations, and all other work on the Improvements and the Premises performed by or on behalf of Tenant (or any person claiming by, through or under Tenant), to be performed diligently, in a good and workmanlike manner, and in compliance with all Applicable Laws.

ARTICLE 8 MAINTENANCE, REPAIRS, AND REPLACEMENTS

8.1 Definitions: Maintenance and Repair.

8.1.1 In this Sublease, the words "**Maintain**" and "**Maintenance**" mean all maintenance that is, according to Institutional Standards, necessary or prudent to keep the Premises and the Improvements safe, in good condition, attractive, 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.

8.1.2 In this Sublease, the words "**Repair**" and "**Repairs**" mean all repairs, replacements, restorations, and renewals that are, according to Institutional Standards, necessary or prudent to keep the Premises and the Improvements 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, but only to the extent required by Institutional Standards.

8.2 Tenant Obligated to Maintain and Repair the Premises. At all times during the Term, Tenant shall Maintain and Repair the Premises and the Improvements at Tenant's sole cost and expense and in accordance with the provisions of this Sublease. Tenant's obligation to Maintain and Repair the Premises and Improvements includes, without limitation, 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, as well as all exterior portions of the Premises, including but not limited to landscaping, driveways, sidewalks, curbs, and parking areas.

8.3 Landlord and City Not Obligated to Maintain or Repair the Premises. Without limiting Section 1.8, throughout the Term of this Sublease,

8.3.1 Landlord and City are not obligated to Maintain or Repair all or any part of the Premises or the Improvements;

8.3.2 Landlord and City are not obligated to pay for any Maintenance or Repair to all or any part of the Premises or Improvements;

8.3.3 Landlord and City are not required to furnish any services or facilities to

Tenant, or to all or any part of the Premises or the Improvements; and

8.3.4 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 or City.

8.4 Security. Throughout the Term, Tenant shall take reasonable measures in accordance with Institutional Standards to keep the Premises (except any portion thereof that remains open to the public for outdoor recreational use as a part of Fairmount Park) and the Improvements safe and secure against break in, fire, theft, vandalism, and other hazards. No Landlord Party is obligated to provide any security for the Premises or Improvements.

ARTICLE 9 ENVIRONMENTAL MATTERS

9.1 Environmental Compliance. Throughout the Term, Tenant shall promptly comply with applicable Environmental Laws affecting the Premises or the Improvements or the use thereof or the handling, storage or disposal of Hazardous Substances located thereon. Tenant shall maintain or cause to be maintained in effect all permits, licenses or other governmental approvals relating to Hazardous Substances, if any, required by applicable Environmental Laws affecting the Premises, the Improvements, or the use of the Premises or Improvements. Tenant shall timely make, or cause to be made, all disclosures required by Environmental Laws, and shall timely comply with, or cause compliance with, all valid, final, and non-appealable orders issued by any governmental authority having jurisdiction over the Premises or the Improvements and the use of the Premises or Improvements. Tenant shall take, or cause to be taken, all action required by governmental authorities to bring the Premises and the Improvements and all activities on the Premises or Improvements into compliance with all Environmental Laws affecting the Premises or the Improvements, or the activities on the Premises or Improvements. Tenant shall take all commercially reasonable steps and all steps consistent with Institutional Standards to prevent Contamination in, on, or about the Premises or Improvements, whether potentially resulting from conditions existing before the Initial Term Commencement Date or from and after the Initial Term Commencement Date.

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

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

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

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

9.3 Indemnity for Environmental Matters.

9.3.1 Throughout the Term, Tenant shall promptly indemnify, defend (by counsel of an insurance carrier obligated to resist or defend such claim or by other counsel reasonably acceptable to Landlord) and hold harmless the Landlord Parties and City Parties from and against any and all losses, claims, suits, actions, damages, expenses (including but not limited to attorneys' and experts' fees and litigation costs), and liabilities, arising from, related to, or in connection with, the death of or injury to any person or damage to any property whatsoever, or any fine or penalty whatsoever imposed by any governmental authority having jurisdiction under any Applicable Law, arising from or caused in whole or in part, directly or indirectly, by (1) the presence in, on or under the Premises or any of the Improvements of any Hazardous Substance that was first introduced to the Premises during the Term of this Sublease, (2) any discharge or release of any Hazardous Substance in or from the Premises or any Improvements during the Term, (3) Tenant's failure to comply with its covenants under **Section 9.1**, or (4) any Hazardous Substance, or material containing Hazardous Substance, that was part of the Improvements existing on the Effective Date. This **Section 9.3.1** does not apply to any Contamination in, on or under the Premises prior to the Initial Term Commencement Date (other than Hazardous Substances related to the Youth Study Center), unless the condition of the Contamination is altered or otherwise affected after the Initial Term Commencement Date by a person or entity other than a Landlord Party or a City Party.

9.3.2 Costs Included: Survival. The indemnity obligations created under this **Section 9.3** include, without limitation, whether foreseeable or unforeseeable, any and all costs incurred in connection with any site investigation, and any and all costs for repair, cleanup, detoxification or decontamination, or other remedial action of or relating to the Premises or any of the Improvements. Without in any way limiting the provisions of **Section 24.13** below, the provisions of this **Article 9** survive the expiration or earlier termination of this Sublease.

ARTICLE 10 INDEMNIFICATION; RELEASE

10.1 Indemnification.

10.1.1 Subject to the provisions of **Section 9.3.1** hereof, Tenant shall throughout the Term promptly indemnify, defend, and hold harmless the Landlord Parties and City Parties from and against any and all losses, claims, suits, actions, damages, expenses (including but not limited to attorneys' and experts' fees and litigation costs), and liabilities, 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), that 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 Tenant, of any of its subtenants, or of any other occupant of all or any part of the Premises or of the Improvements, or of any of their respective trustees, directors, officers, members, agents, employees, contractors, invitees or licensees, occurring in, on or about, or related to, the Premises or the Improvements, (2) the possession, use, occupancy, operation, and maintenance of all or any portion of the Premises or of the Improvements by Tenant, by any of its subtenants or by any other occupant of all or any part of the Premises or of the Improvements, or by any of their respective trustees,

directors, officers, members, agents, employees, contractors, invitees or licensees, (3) the exercise of any right or performance of any obligation by Tenant, by any of its subtenants or by any other occupant of all or any part of the Premises or of the Improvements or by any of their respective trustees, directors, officers, members, agents, employees, contractors, invitees or licensees, under or pursuant to this Sublease or their respective subleases or occupancy agreements, and (4) the condition of all or any portion of the Premises, or of the Improvements, except in each case of (1) through (4) where caused solely and entirely by the gross negligence or willful misconduct of a City Party and/or of a Landlord Party occurring after the Initial Term Commencement Date.

10.1.2 If any action or proceeding is brought against either or both of the Landlord Parties or the City Parties relating to any matter for which they have been indemnified by Tenant, then, upon written notice from an indemnified party to Tenant, Tenant shall, at its sole cost and expense, promptly resist or defend such action or proceeding by counsel approved by the indemnified party in writing. Tenant is not obligated to obtain the indemnified party's approval in each and every instance where the claim is resisted or defended by counsel of an insurance carrier obligated to resist or defend such claim. Without limiting the generality of **Section 24.13**, the provisions of this **Section 10.1** survive the expiration or termination of this Sublease.

10.2 Release. In consideration for the rights granted to Tenant by the Master Lease, this Sublease and the Lease Recognition Agreement, Tenant does, for itself and its successors and assigns, and any person claiming by, through, or under Tenant or any of them, hereby remise, quitclaim, release and forever discharge the Landlord Parties and the City Parties from any and all, and all manner of, actions and causes of action, suits, claims, liabilities, and demands whatsoever in law or in equity that Tenant or any of them may have against any of the Landlord Parties or the City Parties (other than claims and liabilities arising pursuant to the Master Lease, this Sublease or the Lease Recognition Agreement) relating in any way whatsoever, directly or indirectly, to (1) the Premises, the Improvements, and all conditions now or in the future existing in, on, about, or beneath the Premises or the Improvements, except where such conditions result exclusively and entirely from the gross negligence or willful misconduct of any of the Landlord Parties or the City Parties after the Initial Term Commencement Date, (2) the possession, use, occupancy, operation, and maintenance of all or any part of the Premises or of the Improvements, and (3) so long as the City Parties exercise reasonable care in accordance with municipal standards in their operation, maintenance, repair and replacement of the same, the City Conduits, including but not limited to any failure or collapse of, or leakage from, the storm water main maintained by the City Water Department. Without limiting the generality of **Section 24.13**, the provisions of this **Section 10.2** survive the expiration or termination of this Sublease.

10.3 City Acting in Municipal Capacity: Sovereign Immunity. Tenant's indemnifications under **Sections 9.3 and 10.1** above and Tenant's release under **Section 10.2** above do not apply to the City performing its strictly municipal functions (for example, police and fire department service). Nothing in this **Section 10.3**, however, waives or modifies the rights, immunities, defenses, and limitations available to the City or Landlord under 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 **Section 10.3**

waives or modifies any other rights, immunities, defenses, limitations and other benefits available to the City or Landlord under other Applicable Laws.

ARTICLE 11 INSURANCE

11.1 Insurance. Throughout the Term, Tenant shall obtain and maintain, and shall cause its contractors to obtain and maintain, in full force and effect, the types and minimum limits of commercial general liability insurance, umbrella liability insurance, and property insurance for the Premises and Improvements customarily carried in accordance with Institutional Standards. Tenant shall cause Landlord, the City and the Commission to be named as endorsed additional insureds on the commercial general liability insurance maintained by Tenant pursuant to this Sublease.

11.2 Insurer Must Be Authorized to do Business In Pennsylvania. Unless waived in writing by Landlord, Tenant shall obtain each of its insurance policies, and cause its contractors to obtain each of their insurance policies, from one or more insurance companies duly authorized to conduct business in the Commonwealth of Pennsylvania with an A. M. Best Company, Inc. general policyholders rating of at least "A".

11.3 Waiver of Subrogation. Without in any way limiting the effect of any other provision of this Sublease, Tenant releases the Landlord Parties and the City Parties from any and all liability or responsibility to Tenant or anyone claiming through or under Tenant by way of subrogation or otherwise for any loss or damage to the Premises or the Improvements covered by any insurance then in force, or required under this Sublease to be covered by insurance, even if such loss or damage was caused by the fault or negligence of any of the Landlord Parties or the City Parties, or anyone for whom any such party may be responsible, to the full extent of such coverage or required coverage (such release including, without limitation, any liability for any deductible amount under any policy providing such coverage). Tenant shall cause each policy of property insurance required under this Sublease to include a provision for a waiver of subrogation in favor of the Landlord Parties and the City Parties.

11.4 Landlord Has No Obligation to Insure. Landlord and the City have no obligation to insure the Premises or any Improvements, facilities, or other personal property located in or on the Premises or any part of the Premises.

11.5 Copies to Landlord. On or before the Initial Term Commencement Date, and thereafter as often as is required to evidence that Tenant is maintaining the insurance that this Lease requires Tenant to maintain (but not less than once during each calendar year), Tenant shall deliver to Landlord and City certificates of insurance setting forth the policies of insurance Tenant carries in connection with the Premises and the Improvements. Upon not less than twenty-one (21) days prior written notice (or ninety (90) days if Tenant is in the process of changing, or has within the last six (6) months changed, its insurance carrier), and no more frequently than once per calendar year (or monthly during the continuance of an Event of Default), Tenant shall deliver to Landlord and the City copies of the commercial general liability, umbrella liability, and property insurance policies Tenant maintains with respect to the Premises

and the Improvements.

11.6 Adjustment of Loss. Any loss under any policy of insurance that Tenant is required to obtain and maintain under this Sublease may be adjusted solely by Tenant.

11.7 Insurance Amounts No Limit of Tenant's Obligations. The insurance requirements set forth in this **Article 11** do not modify, limit or reduce the indemnification obligations of Tenant under this Sublease and do not limit Tenant's liability under this Sublease to the proceeds of or premiums due upon the policies of insurance required to be maintained by Tenant under this Sublease or to the limits of the policies of insurance required above under this **Article 11**.

11.8 Self Insurance. Tenant may self-insure certain of the coverages required under **Section 11.1** above. In the event that Tenant desires to or does self-insure any of the coverages required under **Section 11.1** above, then upon request by Landlord (but not more than once in any calendar year), Tenant shall submit to Landlord and the City commercially reasonable evidence of Tenant's qualifications to act as a self insurer, including but not limited to certification required by the Commonwealth under Applicable Laws. If Tenant self-insures any of the insurance required above in this **Article 11**, Tenant shall provide the Landlord Parties and City Parties no less than the coverage, rights and benefits under Tenant's self-insurance program (including but not limited to coverage as additional insureds and the rights and benefits under **Section 11.3** above) that they would have received had Tenant satisfied the insurance requirements under **Section 11.1** above by obtaining and maintaining policies of insurance from one or more reputable insurance carriers authorized to do business in the Commonwealth of Pennsylvania.

ARTICLE 12 DAMAGE OR DESTRUCTION

12.1 Damage. If, during the Term, there occurs any damage to or destruction of all or any part of the Premises or the Improvements resulting from any cause whatsoever (a "Casualty"), Tenant shall, at its sole cost and expense, promptly take such action as is reasonably necessary to assure that neither the Premises nor the Improvements constitutes a nuisance or otherwise presents a health or safety hazard.

12.2 Cancellation. If the Improvements suffer a Casualty to the extent that, in the reasonable judgment of Tenant, it would be unfeasible to restore the damaged Improvements, then Tenant may elect in its sole discretion to terminate this Sublease by giving written notice to Landlord on or before one hundred eighty (180) days after such damage or destruction. Within three hundred sixty (360) days after such notice, Tenant shall raze the damaged Improvements, clear the Improvements and all debris and rubble, restore the Premises to open park space with landscaping reasonably satisfactory to the Commission, and return to Landlord possession of the Premises. If Tenant does not provide a notice of its desire to terminate this Sublease on or before 180 days following any Casualty, then Tenant shall promptly either (a) repair and restore the Improvements, or (b) raze the Improvements and construct replacement(s) thereof or (c) raze the Improvements and, if Tenant elects to not construct replacement(s) thereof, restore such area to

open park space, available for public use, with landscaping reasonably satisfactory to Landlord. Notwithstanding anything contained in this Section 12.2 to the contrary, if Tenant exercises its rights as set forth in clause (c) above and for a period of one (1) year after such damage or destruction Tenant does not construct significant improvements on the Premises, Landlord may terminate this Sublease by giving written notice thereof to Tenant at any time prior to the commencement of construction of such improvements.

12.3 Insurance Proceeds. All Insurance Proceeds payable as a result of any Casualty are payable to Tenant and the sole property of Tenant. Tenant's obligations under this **Article 12** shall not be contingent upon the availability of any Insurance Proceeds and survive the expiration or termination of this Sublease.

ARTICLE 13 EMINENT DOMAIN

13.1 Definitions. For the purpose of this Sublease:

13.1.1 The phrase "**Partial Taking**" means (a) a permanent Taking that is not a Total Taking, or (b) the Taking of any appurtenances of the Premises or any areas outside the boundaries of the Premises, or the Taking of rights in, under or above the streets adjoining the Premises or the rights and benefits of light, air or access from or to such streets; and, in the event of either (a) or (b) the remaining portion of the Premises can, in Tenant's reasonable opinion, be adapted and economically and feasibly operated for the Primary Use under this Sublease.

13.1.2 The word "**Taking**" (and capitalized variations of it) means any condemnation or exercise of the power of eminent domain by any authority vested with such power or any other taking for public use, including a purchase under threat of condemnation, or any voluntary conveyance made in lieu of condemnation under the threat of condemnation; and

13.1.3 The phrase "**Total Taking**" means a Taking involving so much of the Premises and/or the Improvements as, when taken, leaves the untaken portion unsuitable, in Tenant's reasonable opinion, for the continued feasible and economic operation of the Premises by Tenant for the Primary Use under this Sublease.

13.2 Total Taking.

13.2.1 If a Total Taking occurs, this Sublease shall terminate in its entirety on the earlier of the date upon which title to the Premises, the Improvements, or any portion of either so Taken is vested in the condemning authority or the date upon which possession of the Premises, the Improvements, or any portion of either, is Taken by the condemning authority. All Rent and other sums then payable by Tenant will be apportioned and paid through and including the date of such termination.

13.2.2 In the event of a Total Taking, each of the Landlord Parties and the City Parties is entitled to claim compensation from the condemning authority for the value of its interests in the Premises and the Improvements and any other items to which such Landlord Party is entitled under Applicable Law. In the event of a Total Taking, Tenant shall be entitled

to separately claim compensation from the condemning authority for the value of its leasehold interest in the Premises, the value of the Improvements (considering, inter alia, that title to the Improvements will vest in the City upon the Sublease Expiration Date as provided in **Section 7.4**), relocation expenses, and any other items to which Tenant is entitled under Applicable Law.

13.3 Partial Taking.

13.3.1 Following a Partial Taking, Tenant shall proceed, with diligence, to perform all necessary and desirable Repairs and to restore the Premises and Improvements not Taken to an economically viable unit in accordance with all Applicable Laws and the requirements of **Article 7** above, and as nearly as possible to the condition the Premises was in immediately prior to the Partial Taking.

13.3.2 In the event of a Partial Taking, each of the Landlord Parties and the City Parties may claim compensation from the condemning authority for the value of its interests in the Premises and the Improvements Taken and any other items to which the Landlord Parties and City Parties are entitled under Applicable Law. In the event of a Partial Taking, Tenant shall be entitled to separately claim compensation from the condemning authority for the value of its leasehold interest in the Premises Taken, the value of the Improvements Taken (considering, inter alia, that title to the Improvements will vest in the City upon the Sublease Expiration Date as provided in **Section 7.4**), relocation expenses, and any other items to which Tenant is entitled under Applicable Law.

13.4 Temporary Taking. If the temporary use of the whole or any part of the Premises or of the Improvements is Taken as contemplated in **Section 13.2** or **13.3** above, this Sublease will remain in full force and effect. All awards, damages, compensation and proceeds payable by the condemnor by reason of a temporary Taking for periods prior to the expiration of this Sublease are payable to Tenant. All such awards, damages, compensation and proceeds for periods of the temporary Taking after the expiration or termination of this Sublease are payable to the Landlord Parties and the City Parties to the extent of their respective interests in the Premises and Improvements.

13.5 Proceedings. In any condemnation proceeding affecting the Premises or the Improvements that may affect Landlord's Estate or the City's estate in the Premises and/or the Improvements, and Tenant's Estate, all such parties may appear in and defend against such action as they deem proper in accordance with their own interests. To the extent possible, the parties shall cooperate to maximize the condemnation proceeds payable by reason of the condemnation. Landlord and Tenant shall join any issues required to be resolved pursuant to this Article in such condemnation proceedings to the extent permissible under then Applicable Laws for the purpose of avoiding multiplicity of actions and minimizing the expenses of the parties.

ARTICLE 14 DEFAULT

14.1 Events of Default. The occurrence of any of the following is a breach of the Sublease and default by Tenant under the Sublease (each of those listed in **Sections 14.1.1** through **14.1.4** are an "**Event of Default**" and those listed only in **Section 14.1.1** are a

“Material Event of Default”):

14.1.1 A material portion of the Premises is used for a purpose other than a Permitted Use, or the Premises are not used by Tenant for the Primary Use as required by this Sublease, and such misuse continues for a period of six (6) months after the date on which Landlord delivers to Tenant a written notice thereof, except that if such misuse is due to the use by a subtenant or licensee of Tenant in violation of that subtenant’s sublease or licensee’s license agreement, then the six (6) month period will be extended by such time as is reasonably necessary to allow Tenant to terminate said sublease or license, provided that Tenant promptly commences legal proceedings necessary to terminate the sublease or license and recapture possession of the subleased or licensed premises and thereafter diligently prosecutes the same to completion; and except further that it shall not be a Material Event of Default if Tenant ceases to use the Premises for the Primary Use in a manner governed by **Sections 7.3 or 12.1** of this Sublease or as otherwise expressly permitted by this Sublease;

14.1.2 Tenant fails to maintain the policies of insurance or waivers of subrogation required by **Article 11** and such failure continues for a period of thirty (30) days after the date on which Landlord delivers to Tenant a written notice thereof;

14.1.3 Tenant fails to pay any Imposition or Additional Rent and such failure continues for a period of fifteen (15) business days after the date on which Landlord delivers to Tenant a written notice thereof;

14.1.4 Tenant fails to fully perform, observe, or satisfy any term, covenant, condition, or other provision of this Sublease to be performed, observed, or satisfied by Tenant, except those set forth in **Sections 14.1.1 through 14.1.3**, and such failure continues for a period of forty-five (45) days after the date on which Landlord delivers to Tenant a written notice of Tenant’s failure ; provided, however, that if the failure is of such a nature as to be subject to cure but not within the 45-day period, then Tenant may have an additional reasonable period of time to effect a cure so long as Tenant has promptly commenced efforts to cure its failure and uses best efforts to diligently prosecute the cure to completion.

14.2 Landlord’s Remedies.

14.2.1 Upon a Material Event of Default, Landlord may exercise the following remedies (in addition to all other rights and remedies available to Landlord at law or in equity not expressly set forth in this Sublease):

1. Damages. Landlord may seek and recover from Tenant all damages (excluding consequential damages) suffered by Landlord and/or the City and all reasonable costs and expenses (including but not limited to attorneys’ fees and litigation costs) incurred by Landlord and/or the City as a result of or in connection with Tenant’s Material Event of Default, plus interest on such damages at the Default Rate from the date incurred until the date paid by Tenant.

2. Equitable Relief. Landlord may seek an order for declaratory judgment, specific performance, injunction, temporary restraining order, or other equitable relief.

3. Termination. Landlord may, at its election, terminate this Sublease by giving Tenant written notice of termination. On the giving of the notice, all of Tenant's rights in the Premises terminate. Upon receiving Landlord's notice of termination, Tenant shall promptly vacate and surrender the Premises in accordance with **Section 15.1.1** hereof, and Landlord may reenter and take possession of the Premises and eject all parties in possession or eject some and not others or eject none. Landlord's termination of this Sublease does not relieve Tenant from the payment of any sums then due to Landlord under this Sublease plus interest on those sums at the Default Rate as provided in this Sublease, or from any claim for damages previously accrued or then accruing against Tenant up to the date of termination. Notwithstanding the foregoing provisions of this **Section 14.2.1.3**, if Tenant disputes such termination by legal proceedings, then: (i) the effectiveness of any such termination of this Sublease will be stayed during the duration of such proceedings until a final, unappealable order is issued upholding the termination, and (ii) the termination will be automatically deemed withdrawn by Landlord and of no further force or effect if within thirty (30) business days after such final, unappealable order, Tenant fully cures the Material Event of Default which gave rise to the Termination.

4. Damages. Without limiting **Section 14.3**, if Landlord terminates this Sublease pursuant to **Section 14.2.1.3**, then Landlord may seek and recover from Tenant all damages (but not consequential damages) suffered by Landlord and/or the City and all reasonable costs and expenses (including but not limited to attorneys' fees and litigation costs) incurred by Landlord and/or the City as a result of or in connection with Tenant's Material Event of Default giving rise to the termination by Landlord, plus interest on the damages from the date incurred until the date paid at the Default Rate.

14.2.2 Upon an Event of Default other than a Material Event of Default, Landlord will have only the following remedies (to the exclusion of all other rights and remedies provided by law or equity not expressly set forth in this Sublease):

1. Damages. Landlord may seek and recover from Tenant all damages (excluding consequential damages) suffered by Landlord and/or the City and all reasonable costs and expenses (including but not limited to attorneys' fees and litigation costs) incurred by Landlord and/or the City as a result of or in connection with Tenant's Event of Default, plus interest on the damages at the Default Rate from the date incurred until the date paid; and

2. Equitable Relief: Landlord may seek an order for declaratory judgment, specific performance, injunction, temporary restraining order, or other equitable relief.

14.3 Cumulative Remedies. Landlord's remedies expressly stated in this Sublease are not exclusive of each other. Landlord may at its election exercise its remedies under this Sublease individually, cumulatively, successively, or in any combination.

ARTICLE 15
SURRENDER OF THE PREMISES UPON EXPIRATION OR TERMINATION

15.1 Surrender Upon Expiration or Termination: Vesting of Title to Improvements; Razing Improvements.

15.1.1 On the Sublease Ending Date, unless otherwise expressly provided in this Sublease,

15.1.1.1 Tenant shall, at its sole cost and expense, promptly quit and surrender possession of the Premises and the Improvements to Landlord without delay and (except as provided in Section 15.1.1.2) in the condition required to be Maintained under this Sublease, normal wear and tear and damage by Casualty excepted;

15.1.1.2 if within sixty (60) days after the Sublease Ending Date Landlord directs Tenant in writing, Tenant shall raze the Improvements, clear the Premises of debris and rubble, restore the Premises to open park space with landscaping reasonably satisfactory to the Executive Director, and return to Landlord possession of said Premises;

15.1.1.3 if within sixty (60) days after the Sublease Ending Date Landlord does not direct Tenant to raze the Improvements and restore the Premises as provided in 15.1.1.2 above, then title to the Improvements will automatically vest in the City at the end of the 60-day period without the need for any party to execute any instrument or other document, but Tenant shall execute such appropriate documentation as may be reasonably requested by Landlord to confirm the transfer of title to the Improvements to the City, and Tenant's obligation to do so survives the expiration of this Sublease;

15.1.1.4 Tenant's surrender of the Premises and Improvements before expiration of the Term will not merge Landlord's Estate and Tenant's Estate, unless Landlord expressly elects in writing to terminate the Sublease and merge the two estates.

15.1.2 Survival. Tenant's obligations under this **Section 15.1** survive the expiration or earlier termination of this Sublease.

15.2 Tenant's Personal Property.

15.2.1 Subject to **Section 5.1**, Tenant may, without notice to or consent of Landlord, remove any or all personal property from the Premises and the Improvements at all times during the Term and upon the Sublease Ending Date.

15.2.2 Any personal property (other than the Barnes Collection, or any portion of it, or any other works of art) that remains in or on the Premises and Improvements after the Sublease Ending Date will be deemed to have been abandoned and either may be retained by Landlord as Landlord's property or may be disposed of in such manner as Landlord may see fit. All costs incurred by Landlord for removing and disposing of the personal property (including any portion of the Barnes Collection or other works of art left on the Premises after the Sublease Ending Date and stored by Landlord or returned by Landlord to Tenant), together with interest at

the Default Rate from the date such costs and expenses are incurred, shall be paid by Tenant to Landlord as Additional Rent within ten (10) days after delivery of a statement from Landlord for the amount due, and said obligation shall survive the Sublease Ending Date. If such personal property is sold by Landlord, Landlord may receive and retain the proceeds of such sale as Landlord's property.

15.3 The Barnes Collection. Notwithstanding anything to the contrary in this Sublease (except as provided in **Section 15.2** and except for any works of art loaned by Landlord or City to Tenant), neither the Landlord nor the City has nor at any time shall have any right, title or interest in or to, or be entitled to sell, the Barnes Collection or any part of the Barnes Collection or any works of art located upon the Premises.

ARTICLE 16 SUBLEASES AND TRANSFERS

16.1 Prohibited Transfers. Except for a Permitted Transfer (defined below), because of the public purpose of Landlord and City in leasing the Premises to Tenant to conduct the Primary Use, Tenant shall not assign, transfer, mortgage, pledge, hypothecate or encumber the Premises or this Sublease or sublet, license or otherwise permit the use or occupancy of all or any part of the Premises or of the Improvements (any of the same being called in this Sublease a **"Prohibited Transfer"**).

16.2 Prohibited Transfer a Default. Any Prohibited Transfer made or given by Tenant or otherwise in violation of **Section 16.1** or **Section 16.3** of this Sublease is void.

16.3 Transfers By Legal Process or Operation of Law. The prohibition against Prohibited Transfers under this Sublease includes but is not limited to: (1) any liquidation or dissolution of Tenant, or (2) any transfer of Tenant's interest in this Sublease by levy or sale on execution, or other legal process, or by merger or operation of law, and any transfer in bankruptcy or insolvency, or under any other compulsory procedure or order of court.

16.4 Permitted Transfers. Notwithstanding the foregoing provisions of this **Article 16**, Tenant may sublease, license, or permit use or occupancy of Tenant's Facility and the Premises only as follows (each, a **"Permitted Transfer"**): (A) without the need for consent of the Landlord or City, Tenant may enter into a sublease, license, or use or occupancy agreement, with a person or entity to use or occupy a portion of Tenant's Facility to conduct, operate, or manage any Permitted Use (other than the Primary Use), so long as the same does not interfere with Tenant's Primary Use of the Premises (provided that Tenant shall not enter into any sublease, license, or other agreement for a commercial activity to be conducted outside of Tenant's Facility without the prior consent of the Commission); and/or (B) subject strictly to the prior consent of Philadelphia City Council by ordinance, Tenant may assign its entire interest under this Sublease and in the Premises and Improvements to any successor to Tenant approved by a final, unappealable court order or decree. Tenant may make a Permitted Transfer only if (1) no Material Event of Default exists under this Sublease at the time that the Permitted Transfer is made; and (2) in the case of an assignment where the proposed transferee is a successor to Tenant, the successor agrees in writing in advance that it shall hold and display all of the Barnes

Collection at Tenant's Facility as part of a non-profit art education facility or public charity. Each assignee, subtenant, licensee, or other user or occupant pursuant to a Permitted Transfer under clause (A) above shall use the Premises only for a Permitted Use (other than the Primary Use). A successor to Tenant's entire interest under this Sublease, shall use the Premises only for the Primary Use and the other Permitted Use.

16.5 Landlord's Transfer of the Premises. Except with Tenant's prior approval, which Tenant shall not unreasonably withhold or delay, Landlord shall not sell, assign, transfer, mortgage, pledge, hypothecate or encumber the Premises before Tenant completes construction of Tenant's Facility. Landlord shall similarly require City not to sell, assign, transfer, mortgage, pledge, hypothecate or encumber the Premises before Tenant completes construction of Tenant's Facility, except with Tenant's prior approval, which Tenant shall not unreasonably withhold or delay. If this Sublease terminates before Tenant completes construction of Tenant's Facility, then Landlord or the City may sell, assign, transfer, mortgage, pledge, hypothecate or encumber the Premises at any time after the Sublease Ending Date.

ARTICLE 17
PHILADELPHIA HOME RULE CHARTER AND PHILADELPHIA CODE
REQUIREMENTS: NON-INDEBTEDNESS; NON-DISCRIMINATION

17.1 Non-Discrimination. In Tenant's use of the Premises and exercise of its rights under this Sublease, Tenant shall not discriminate or permit discrimination against any person because of age, race, color, religion, national origin, physical disability, sex, sexual orientation, or gender identity.

17.2 Non-Indebtedness. By executing this Sublease, Tenant represents and warrants that Tenant and Tenant's subsidiaries, and affiliates, if any, are not currently indebted to the City for or on account of, and, Tenant covenants, 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 reasonably satisfactory to the City has been established.

17.3 Non-Indebtedness of Tenant's Contractors. Tenant shall endeavor in good faith to include the provision below within its written agreements with contractors performing construction of the Improvements, performing any Alterations, or performing interior alterations that are capital in nature, for or on behalf of Tenant:

Contractor (or subcontractor, as the case may be) represents that contractor and contractor's parent company(ies) and subsidiary(ies) are not currently indebted to the City of Philadelphia ("City") for or on account of, and will not at any time during the term of this Contract 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 City has been established.

Tenant shall have no liability for (i) Tenant's failure to include the aforementioned provision within said agreements or (ii) if Tenant includes the aforementioned provision within said agreements, any inaccuracy of the contractor's representation as set forth therein.

17.4 Prohibited Gifts, Gratuities, and Favors.

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

17.4.2 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 the Executive Order.

ARTICLE 18
RIGHT OF OFFER TO PURCHASE PREMISES; RIGHTS AT END OF TERM

18.1 Right of First Offer to Purchase Premises. Tenant acknowledges that, notwithstanding the rights granted to Tenant in this Article 18, it is the policy of the Fairmount Park Commission not to sell land that is part of Fairmount Park, and that as of the Effective Date the Commission has no intention to sell any or all of the Premises.

18.1.1 Grant of Right. By this Sublease, subject to the remaining provisions of this Article 18, Landlord grants, conveys and transfers to Tenant the first and prior right and privilege of (a) purchasing the Premises (the "**Right of Purchase**") and (b) leasing the Premises (the "**Right of Lease**"). The Right of Purchase and the Right of Lease do not apply to a sale or leasing of the Premises or a portion of the Premises, or of all or any portion of any Improvements in or on the Premises, to the City, to any of its related agencies or to any municipal, governmental or quasi-governmental authority.

18.1.2 Offer Notice. At any time during the Term and during the two-year period after the Sublease Ending Date ("**Offer Period**"),

18.1.2.1 if Landlord desires or intends to sell or lease all or any part of the Premises, or if Landlord receives an unsolicited offer to purchase or lease all or any part of the Premises, then before offering the Premises or any part of the Premises for sale or lease, engaging in negotiations with any offeror or party, or accepting an offer to sell or lease all or part of the Premises during the Offer Period, Landlord shall first give written notice to Tenant (the "**Offer Notice**") of Landlord's desire or intention. Landlord's Offer Notice shall include or have attached to it:

A. the price, terms and conditions of, or procedures for implementing, the proposed sale or lease that are acceptable to Landlord or are otherwise required by Applicable Laws;

B. Landlord's offer to sell or lease the Premises or applicable portion thereof to Tenant at the stated price and on the stated terms and conditions, or

C. a notice of the procedures Landlord will follow to implement the sale or lease (for example, without limitation, legally required public bidding).

18.1.2.2 Tenant acknowledges and agrees that Landlord may inform any party making an offer to the Landlord to purchase or lease some or all of the Premises, or any party that might be interested in purchasing or leasing the Premises, of this **Section 18.1.2** and of this Sublease.

18.1.3 Tenant's Investigations and Election. Within sixty (60) days following the day on which Tenant receives the Offer Notice ("**Acceptance Period**"), Tenant may elect to accept or reject the terms and conditions of the Offer Notice or to participate in the procedures by which Landlord intends to sell or lease some or all of the Premises.

18.1.3.1 To validly accept the Offer Notice, Tenant must notify Landlord in writing of Tenant's election to accept the terms of the Offer Notice (the "**Election Notice**") before the expiration of the Acceptance Period.

18.1.3.2 If Tenant elects to accept the terms of the Offer Notice, then (1) Landlord and Tenant shall execute a mutually acceptable purchase or lease agreement (as applicable) within ninety (90) days following the date on which Landlord receives the Election Notice, or (2) Tenant shall participate in the procedures instituted by Landlord to sell or lease (as applicable) some or all of the Premises in accordance with Applicable Laws.

18.1.3.3 Notwithstanding any closing date specified in the Offer Notice (if applicable), Tenant may in its Election Notice specify the actual closing date for the conveyance of title to the property described in the Offer Notice, and validly accept the other terms and conditions of the Offer Notice, in which event the closing date shall be the date so specified in the Election Notice, provided that said closing date is not more than one (1) year after the date of the Offer Notice.

18.1.4 Tenant's Rejection.

18.1.4.1 For purposes of this **Section 18.1.4** only, the terms "**sell**" and "**sale**" mean the full execution of a purchase and sale agreement pursuant to which the parties to the agreement agree to the terms and conditions for the transfer of title to the Premises or a portion of the Premises. In addition, for purposes of this **Section 18.1.4**, the term "**lease**" means the full execution of a lease, license or other occupancy agreement pursuant to which the parties to the lease agree to the terms and conditions for the occupancy of the Premises or a portion of the Premises.

18.1.4.2 If Tenant elects to reject the terms of the Offer Notice, or fails to respond to the Offer Notice within the Acceptance Period (in which case Tenant will be deemed to have rejected the Offer Notice), then (A) Landlord may market the portion of the Premises specified in the Offer Notice on the open market or, (B) if the Offer Notice is based on an offer Landlord received to purchase or lease some or all of the Premises, Landlord may sell or lease some or all of the Premises in accordance with the provisions set forth in the Offer Notice. If Landlord markets the Premises under 18.1.4.2(A), Tenant will also receive any information given to prospective buyers.

18.1.4.3 If Landlord receives an acceptable offer (in Landlord's sole discretion) from a third party which is less than ninety percent (90%) of the sale price or rental rate specified in the Offer Notice, Landlord shall inform Tenant of such offer and its terms in an Offer Notice and Tenant will have the right, within thirty (30) days of Landlord's notice to Tenant of such offer, to notify Landlord of its desire to purchase or lease (as applicable) the property identified in the Offer Notice.

18.1.4.4 If Landlord does not sell or lease (as applicable) the property identified in the Offer Notice within eighteen (18) months following Tenant's rejection or deemed rejection of the Offer Notice, and if the Right of Purchase or Right of Lease (as applicable) has not terminated or expired, Landlord may not sell or lease the property identified in the Offer Notice or any part of the Premises or offer the Premises for sale or lease without first delivering to Tenant a new Offer Notice, which Tenant may accept or reject in accordance with the terms of this Section.

18.1.4.5 If Landlord enters into an agreement to sell or lease the property identified in the Offer Notice to a party (other than Tenant) as permitted by this Section, the parties to the agreement for the sale or lease (as applicable) may not modify the terms of the transaction specified in the sale or lease agreement by adjusting the sale price or rental rate (as applicable) to a sale price or rental rate that is less than ninety percent (90%) of the sale price or rental rate set forth in the Offer Notice, unless Landlord first delivers to Tenant a new Offer Notice containing the modified price, terms and conditions, which Offer Notice Tenant may accept or reject in accordance with the provisions this Section.

18.2 Subject to Public Bidding Requirements. Notwithstanding any provision of this Article to the contrary, the rights of Tenant set forth in this Article are subject to the then-prevailing Applicable Laws regarding the sale or leasing of the Premises, including without limitation possible requirements for public notice and bidding.

18.3 Survival. The Right of Purchase and the Right of Lease will survive the expiration of the Term for a period of two (2) years but will end immediately upon the earlier termination of this Sublease.

18.4 Assignment. Landlord hereby assigns and transfers to Tenant all of Landlord's rights pursuant to **Article 19** of the Master Lease.

ARTICLE 19
NOTICES

19.1 Giving Notice. Any notice, approval, request, demand or other communication required or desired to be given pursuant to this Sublease 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: Philadelphia Authority for Industrial Development
2600 Centre Square West
1500 Market Street
Philadelphia, PA 19102
Attention: Chairman

and: Executive Director
Fairmount Park
One Parkway Building --- 10th Floor
1515 Arch Street
Philadelphia, PA 19102

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

and: 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 Parkway Building – 17th Floor
1515 Arch Street
Philadelphia, PA 19102

If to Tenant: The Barnes Foundation
300 North Latches Lane
Merion, PA 19066
Attention: Executive Director

With a copy to: Blank Rome LLP
One Logan Square
18th & Cherry Streets
Philadelphia, PA 19103
Attention: G. Craig Lord, Esq. and
Joan N. Stern, Esq.

19.2 Date of Notice Delivery. For purposes of this Sublease, notice given in the manner provided in **Section 19.1** 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.

19.3 Change of Notice Address. Either Landlord or Tenant may change its respective address or the address(es) to which the other party must provide notice or 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 20

ESTOPPEL CERTIFICATES; LEASE RECOGNITION AGREEMENT

20.1 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. The term “**Estoppel Certificate**” means a written statement certifying (a) that this Sublease is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Sublease, as so modified, is in full force and effect and the date to which the Base Rent, Additional Rent and other charges or sums due are paid in advance, if any, (b) that, to the actual knowledge of the certifying party (without investigation), there are no uncured defaults on the part of Landlord or Tenant, or if there exist any uncured defaults on the part of Landlord or Tenant, stating the nature of such uncured defaults, and (c) that, to the actual knowledge of the certifying party (without investigation), the correctness of such other factual information respecting the status of this Sublease as may be reasonably required by the requesting party. The City may give an Estoppel Certificate on behalf of Landlord.

20.2 Mortgages; Non-Disturbance and Attornment Agreements. Landlord represents, warrants and covenants to Tenant that, as of the Effective Date of this Sublease, neither the Premises nor any interest therein is subject to the terms, conditions or lien of any mortgage. Throughout the Term, this Sublease is superior to the lien of any mortgage that the City or Landlord 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.

20.3 Lease Recognition Agreement. Landlord represents, warrants and covenants to Tenant that, as of the Effective Date of this Sublease, neither the Premises nor any interest of Landlord’s in the Premises is subject to a leasehold interest other than that created by the Master Lease. Contemporaneously with execution of this Sublease, Landlord, Tenant, and City have

executed and delivered a Lease Recognition Agreement in the form of that attached as **Exhibit H** (the “**Lease Recognition Agreement**”). Tenant may record the Lease Recognition Agreement against the Premises at Tenant’s sole cost and expense.

ARTICLE 21
APPROVALS BY LANDLORD; CITY MAY EXERCISE LANDLORD’S RIGHTS

21.1 Validity and Manner of Landlord Approval.

21.1.1 Subject to **Section 21.1.3**, unless otherwise stated expressly in this Sublease, each review, approval, permission, or consent that Tenant is required under this Sublease to obtain from Landlord will be effective, valid and binding against Landlord only if given, made or performed by the Chairman of Landlord. Tenant acknowledges that, to give such approval, permission or consent, the Chairman of Landlord may be required to obtain the approval, permission or consent of Landlord’s Board of Directors.

21.1.2 Each review, approval, permission, or consent that Tenant is required under this Sublease to obtain from a person or entity other than Landlord will be effective, valid and binding only if obtained or confirmed by the specified person or entity and in the manner required by this Sublease, or if not specified in this Sublease, in the manner required by Applicable Law.

21.1.3 Notwithstanding any other provision of this Sublease to the contrary, to the extent that the review, approval, permission, consent, determination, or acceptance of Landlord is required pursuant to any provision of this Sublease, that provision automatically is deemed to also require the review, approval, permission, consent, determination, or acceptance of the Executive Director. Furthermore, any review, approval, permission, consent, determination, or acceptance by the Executive Director will constitute the review, approval, permission, consent, determination, or acceptance of Landlord as well. Whenever the review, approval, permission, or consent of, or determination or acceptance by, the City is required under this Sublease (except for approvals required under Applicable Laws or approvals that this Sublease expressly requires be obtained from City Council or a specified City official other than the Executive Director), that review, approval, permission, consent, determination, or acceptance will be effective, valid and binding against the City and Landlord only if obtained from or made by the Executive Director and in the manner required by this Sublease.

21.1.4 Tenant acknowledges and agrees that the City is a third-party beneficiary of this Sublease and that the City may exercise any and all rights and remedies of Landlord under this Sublease.

21.2 Effect of Landlord’s Approval. Landlord’s or the City’s review, approval, permission, consent, determination, or acceptance under this Sublease of any document, work, matter, or thing, is not (a) a representation, warranty or guaranty by Landlord or City 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.

**ARTICLE 22
NO MERGER**

22.1 No Merger. The voluntary or other surrender of this Sublease by Tenant, or a mutual cancellation of this Sublease by Landlord and Tenant, will not merge the Tenant's leasehold estate and Landlord's Estate in the Premises. At any time after such surrender or cancellation, however, Landlord may elect to terminate this Sublease.

**ARTICLE 23
QUIET ENJOYMENT; LANDLORD'S RIGHT TO ENTER AND INSPECT PREMISES**

23.1 Quiet Enjoyment. So long as no Material Event of Default exists, 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 23.1** is subject to the provisions of this Sublease, including Landlord's limited right to enter and inspect the Premises provided in **Section 23.2** below.

23.2 Landlord's Right to Enter Premises. Notwithstanding the provisions of **Section 23.1**, Landlord and City may enter the Improvements only for the purpose of (a) performing the City's municipal duties, such as (for example only without limitation) delivering police and fire services, inspections by licensing departments and other similar services, (b) exercising Landlord's remedies under this Sublease, or (c) not more than once each year, determining Subtenant's compliance with the Sublease.

**ARTICLE 24
GENERAL PROVISIONS**

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

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

24.3 Time of Essence; Force Majeure. Time is of the essence for the performance and observation of each provision of this Sublease. If Tenant cannot satisfy any of its non-monetary obligation under this Sublease because of a Force Majeure Event, then Tenant is 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 Sublease regardless of whether this Sublease (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.

24.4 Severability. If any one or more of the provisions contained in this Sublease is for any reason held to be invalid, illegal or unenforceable in any respect (as determined by a final, unappealable order of a court of competent jurisdiction), such invalidity, illegality or unenforceability shall not affect any other provision of this Sublease, but this Sublease shall be construed as if such invalid, illegal or unenforceable provision had not been contained in this Sublease. If the invalid, illegal, or unenforceable provision (as determined by a final, unappealable order of a court of competent jurisdiction) is **Section 5.1.1**, however, then either Landlord or Tenant may terminate this Sublease upon one hundred eighty (180) days written notice to the other, except that Landlord may not terminate this Sublease pursuant to this **Section 24.4** so long as Tenant continues to comply with the provisions of **Section 5.1.1**.

24.5 Interpretation.

24.5.1 This Sublease shall be governed by the laws of the Commonwealth of Pennsylvania, without giving effect to choice of law provisions. The language in all parts of this Sublease 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 Sublease 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 Sublease 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 Sublease.

24.5.2 Unless expressly provided otherwise, all references in this Sublease to sections, exhibits, and attachments refer to sections, exhibits and attachments of and to this Sublease. Unless expressly provided otherwise, all references in this Sublease to the Premises means all or part of the Premises, and reference to the Improvements means all or part of the Improvements.

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

24.6 Successors and Assigns. Without limiting or modifying the restrictions set forth in **Article 16** above regarding subleases, mortgages, and transfers, this Sublease is binding upon and inures to the benefit of the parties to this Sublease and their respective permitted successors and assigns (to the extent this Sublease is assignable).

24.7 Integration Clause; Third-Party Rights. This Sublease and the Exhibits attached to this Sublease are the entire, final, complete, and exclusive agreement between Landlord and Tenant, and there are no agreements or representations between Landlord and Tenant except as expressed in this Sublease and the Exhibits attached to this Sublease. All prior negotiations and agreements between Landlord and Tenant with respect to the subject matter of this Sublease are superseded by this Sublease. Except as provided with respect to the City in **Section 21.1.4** hereof, nothing in this Sublease shall be construed to constitute, create or confer rights, remedies or claims in or upon any person or entity not a party hereto or to create obligations or

responsibilities of the parties hereto to any of such persons or entities or to permit any such person or entity to rely upon the covenants, conditions and agreements contained herein.

24.8 Strict Enforcement of the Sublease. Either party may enforce all provisions of this Sublease 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 Sublease at any time, (3) any conduct of the enforcing party in refraining from exercising its rights and remedies under this Sublease, and (4) any course of conduct between Landlord and Tenant. Any conduct or custom between Landlord and Tenant does not create a custom that is in any way or manner contrary to any specific provision of this Sublease, and does not in any way or manner modify this Sublease.

24.9 Amendment and Modification. This Sublease can only be amended, modified or supplemented by a written agreement approved in advance by Philadelphia City Council, by ordinance that becomes law, and approved and signed by both Landlord and Tenant. This Sublease 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. Landlord hereby agrees that it shall make no amendment, modification or supplement to the Master Lease which adversely affects the rights of Tenant under this Sublease or Tenant's third-party rights under the Master Lease without Tenant's prior written consent. Landlord hereby agrees to deliver a copy of any proposed amendment, modification or supplement to the Master Lease to Tenant prior to the introduction of the ordinance authorizing such amendment, modification or supplement.

24.10 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 Sublease 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 Sublease does not constitute Tenant's consent to Landlord's request or offer. Each party shall comply with its obligations under this Sublease unless and until a request or offer to modify or waive any provision of this Sublease is expressly 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 Sublease will not be granted or valid unless also approved by the Commission by resolution.

24.11 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 Sublease nor any acts of Landlord or Tenant create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

24.12 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 Sublease that might result in the other party being held liable for all or any portion of a commission under this Sublease. 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.

24.13 Survival. Notwithstanding anything to the contrary contained in this Sublease, only those provisions (including, without limitation, covenants, agreements, representations, warranties, obligations, and liabilities described in any provision) of this Sublease which are expressly stated to survive the Sublease Ending Date survive the Sublease Ending Date and continue to be binding upon the party to which they apply.

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

24.15 No Personal Liability of Landlord. Neither Landlord nor any officer, director or employee thereof shall have any liability, personal or otherwise, with respect to this Sublease 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. Any liability of Landlord arising under or related to this Sublease shall be limited to Landlord's interest in the Premises and the lien of any judgment shall be restricted thereto. Nothing contained in this **Section 24.15** shall preclude Tenant from obtaining injunctive or other equitable relief against Landlord to the extent that Applicable Law permits.

24.16 No Personal Liability of Tenant. No officer, director, trustee or employee of Tenant shall have any liability, personal or otherwise, with respect to this Sublease or the transaction contemplated hereby, nor shall the property of any such person be subject to attachment, levy, execution or other judicial process. Nothing contained in this **Section 24.16** shall preclude Landlord from obtaining injunctive or other equitable relief against Tenant to the extent that Applicable Law permits.

24.17 Background. The Background paragraphs to this Sublease are incorporated into and part of this Sublease.

24.18 Landlord's Administrative Costs. Tenant hereby agrees to reimburse Landlord from time to time upon the demand of Landlord for Landlord's reasonable out-of-pocket third-party costs incurred in connection with the administration of Landlord's responsibilities pursuant to this Lease after the completion of construction of Tenant's Facility, provided that Landlord will consult with Tenant in advance prior to incurring any such costs in excess of Five Thousand Dollars (\$5,000) in any one calendar year.

[The remainder of this 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 Sublease as of the date stated in the preamble.

LANDLORD:

PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT

By: _____

Name: _____

Title: _____

TENANT:

THE BARNES FOUNDATION

By: _____

Name: Dr. Bernard C. Watson

Title: Chair

Attest: _____

Name: Jacqueline F. Allen

Title: Secretary

EXHIBITS

- Exhibit A - The Premises (legal description)
- Exhibit B - Memorandum of Master Lease
- Exhibit C - Resolution of Tenant's Board of Trustees
- Exhibit D - Copy of Commission's Resolution
- Exhibit E - Copy of PAID's Resolution
- Exhibit F - Copy of the City Ordinance
- Exhibit G - Economic Opportunity Plan
- Exhibit H - Lease Recognition Agreement
- Exhibit I - Form of Memorandum of Sublease

Exhibit A

EXHIBIT A

THE PREMISES

All the land bounded by Benjamin Franklin Parkway, 20th Street, Pennsylvania Avenue, and 21st Street, and generally described as follows:

ALL THAT CERTAIN lot or piece of ground, SITUATE in the 8th Ward of the City of Philadelphia, and described in accordance with a City Plan #63 confirmed 10/4/1993 by the Board of Surveyors, to wit:

BEGINNING at the point formed by the intersection of westerly side of 20th Street (variable width, 70' wide at this point) with the northeasterly House Line of The Benjamin Franklin Parkway (250' wide);

THENCE extending N 44°20'50" W, along the northeasterly House Line of said Benjamin Franklin Parkway, the distance of 571.958' to the point of intersection with the easterly side of 21st Street (70' wide);

THENCE extending N 11°30'21" E, along the easterly side of said 21st Street, the distance of 341.498' to a point of curvature;

THENCE extending along the arc of a circle, curving to the right, having a radius of 14.140', the arc distance of 25.173' to a point of tangency on the southwesterly side of Pennsylvania Avenue (64' wide);

THENCE extending S 44°20'50" E, along the southwesterly side of said Pennsylvania Avenue, the distance of 48.538', to a point of curvature.

THENCE continuing along the southwesterly side of said Pennsylvania Avenue, along the arc of a circle, curving to the right, having a radius of 100', the arc distance of 24.439' to a point of tangency on the southwesterly side of said Pennsylvania Avenue;

THENCE continuing S 52°29'29" E, along the southwesterly side of said Pennsylvania Avenue, the distance of 427.766', to the point of intersection with the westerly side of said 20th Street (50' wide at this point).

THENCE extending S 11°21'00" W, along the westerly side of said 20th Street, the distance of 470.813' to the point of intersection with the northeasterly side of said Benjamin Franklin Parkway, being first mentioned point and place of BEGINNING.

CONTAINING in area 200,044 Sq. Ft. or 4.5924 acres, more or less.

Exhibit B

MEMORANDUM OF LEASE

The CITY OF PHILADELPHIA, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania ("**Landlord**"), by a Master Ground Lease dated _____, 2007 ("**Lease**"), has leased to the PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT, a body politic and corporate existing under the laws of the Commonwealth of Pennsylvania ("**Tenant**"), having a mailing address of 2600 Centre Square West, 1500 Market Street, Philadelphia, Pennsylvania 19102, ALL THAT CERTAIN PARCEL OF LAND situate in the City of Philadelphia, Pennsylvania, which is described on Exhibit A attached hereto and hereby made a part hereof ("**Premises**").

The Lease became effective on _____, 2007. As is more particularly provided in the Lease, the Master Lease Initial Term (as said term is defined in the Lease) of the Lease is anticipated to commence in 2008 and to expire by no later than 2011, subject to adjustment as provided in the Lease. As is more particularly provided in the Lease, upon the expiration of the Master Lease Initial Term, the Master Lease Operating Term (as said term is defined in the Lease) commences and continues for approximately ninety-nine (99) years thereafter.

As more particularly provided in the Lease, Tenant has certain preferential rights to purchase and to lease the Premises.

Nothing contained in this Memorandum of Lease is intended or shall be construed to modify or amend any of the provisions of the Lease, which shall prevail over the provisions of this Memorandum of Lease.

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

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

IN WITNESS WHEREOF, the parties have signed below this ____ day of _____, 200__.

LANDLORD:

**CITY OF PHILADELPHIA
FAIRMOUNT PARK COMMISSION**

Robert N.C. Nix, III, President

Mark A. Focht, Executive Director, Fairmount Park

DEPARTMENT OF PUBLIC PROPERTY

Joan Schlotterbeck, Commissioner, Public Property

TENANT:

CORPORATE SEAL:

**PHILADELPHIA AUTHORITY FOR INDUSTRIAL
DEVELOPMENT**

By: _____
Chairman/Vice President

By: _____
Secretary/Treasurer

COMMONWEALTH OF PENNSYLVANIA :
 : SS.
COUNTY OF PHILADELPHIA :

On this, the ____ day of _____, 200__, before me, a notary public in and for the state and county aforesaid, personally appeared _____, who acknowledged himself/herself to be the _____ of the PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT, a body corporate and politic existing under the laws of the Commonwealth of Pennsylvania, and that he/she, as such officer, being authorized to do so, executed the foregoing instrument by signing the name of the PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT by himself/herself as such officer.

IN WITNESS WHEREOF, I have signed below the day and year aforesaid.

Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA :

: SS.

COUNTY OF PHILADELPHIA :

On this, the _____ day of _____, 2007, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____ who acknowledged (himself)(herself) to be the President of the Fairmount Park Commission of THE CITY OF PHILADELPHIA, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania, and that (he)(she), being authorized to do so, executed the foregoing Lease Recognition Agreement on behalf of THE CITY OF PHILADELPHIA as the President of the Fairmount Park Commission.

IN WITNESS WHEREOF, I have signed below the day and year aforesaid.

Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA :

: SS.

COUNTY OF PHILADELPHIA :

On this, the ____ day of _____, 2007, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____ who acknowledged (himself)(herself) to be the Executive Director of Fairmount Park of THE CITY OF PHILADELPHIA, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania, and that (he)(she), being authorized to do so, executed the foregoing Lease Recognition Agreement on behalf of THE CITY OF PHILADELPHIA as the Executive Director of Fairmount Park.

IN WITNESS WHEREOF, I set my hand and Notarial seal below.

My Commission Expires:

NOTARY PUBLIC

[NOTARIAL SEAL]

COMMONWEALTH OF PENNSYLVANIA :

: SS.

COUNTY OF PHILADELPHIA :

On this, the ____ day of _____, 2007, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____ who acknowledged (himself)(herself) to be the Commissioner of the Department of Public Property of THE CITY OF PHILADELPHIA, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania, and that (he)(she), being authorized to do so, executed the foregoing Lease Recognition Agreement on behalf of THE CITY OF PHILADELPHIA as the Commissioner of the Department of Public Property.

IN WITNESS WHEREOF, I set my hand and Notarial seal below.

My Commission Expires:

NOTARY PUBLIC

[NOTARIAL SEAL]

EXHIBIT A
THE PREMISES

All the land bounded by Benjamin Franklin Parkway, 20th Street, Pennsylvania Avenue, and 21st Street, and generally described as follows:

ALL THAT CERTAIN lot or piece of ground, SITUATE in the 8th Ward of the City of Philadelphia, and described in accordance with a City Plan #63 confirmed 10/4/1993 by the Board of Surveyors, to wit:

BEGINNING at the point formed by the intersection of westerly side of 20th Street (variable width, 70' wide at this point) with the northeasterly House Line of The Benjamin Franklin Parkway (250' wide);

THENCE extending N 44°20'50" W, along the northeasterly House Line of said Benjamin Franklin Parkway, the distance of 571.958' to the point of intersection with the easterly side of 21st Street (70' wide);

THENCE extending N 11°30'21" E, along the easterly side of said 21st Street, the distance of 341.498' to a point of curvature;

THENCE extending along the arc of a circle, curving to the right, having a radius of 14.140', the arc distance of 25.173' to a point of tangency on the southwesterly side of Pennsylvania Avenue (64' wide);

THENCE extending S 44°20'50" E, along the southwesterly side of said Pennsylvania Avenue, the distance of 48.538', to a point of curvature.

THENCE continuing along the southwesterly side of said Pennsylvania Avenue, along the arc of a circle, curving to the right, having a radius of 100', the arc distance of 24.439' to a point of tangency on the southwesterly side of said Pennsylvania Avenue;

THENCE continuing S 52°29'29" E, along the southwesterly side of said Pennsylvania Avenue, the distance of 427.766', to the point of intersection with the westerly side of said 20th Street (50' wide at this point).

THENCE extending S 11°21'00" W, along the westerly side of said 20th Street, the distance of 470.813' to the point of intersection with the northeasterly side of said Benjamin Franklin Parkway, being first mentioned point and place of BEGINNING.

CONTAINING in area 200,044 Sq. Ft. or 4.5924 acres, more or less.

Exhibit C

**THE BARNES FOUNDATION
RESOLUTIONS**

WHEREAS, the Orphans' Court of the Montgomery County Court of Common Pleas (the "*Orphans' Court*") has granted The Barnes Foundation ("*The Foundation*") authority to move its gallery collection (as defined in Paragraph 9 of the Amended Indenture) from its current location in Merion, Pennsylvania to land located on the Benjamin Franklin Parkway in Philadelphia, Pennsylvania, which currently is utilized by the City of Philadelphia's Youth Study Center (the "*Property*"); and

WHEREAS, in the judgment of the Board after full and careful consideration, it is deemed advisable and in the best interests of The Foundation, to move The Foundation's gallery collection to Philadelphia and to build a new building on the Property to house and display the gallery collection, among other contemplated uses to fully implement the mission of The Foundation (the "*Facility*").

NOW, THEREFORE, BE IT

RESOLVED, that the officers of The Foundation are hereby authorized and directed to move The Foundation's gallery collection from the gallery in Merion, Pennsylvania to Philadelphia, Pennsylvania; and be it

FURTHER RESOLVED, that appropriate officers of The Foundation are authorized and directed, in the name and on behalf of The Foundation, to receive and occupy the Property from the City of Philadelphia to build the Facility which will house the Foundation's gallery collection; and be it

FURTHER RESOLVED, that upon the recommendation of the Building Committee, the appropriate officers of The Foundation be, and each of them is, authorized to contract for and direct, on behalf of The Foundation, the demolition of any building and improvements currently on the Property and the removal and disposal of all debris associated with preparing the Property for construction of the Facility; and be it

FURTHER RESOLVED, that the appropriate officers of The Foundation are authorized to accept and utilize public grant money from the Commonwealth of Pennsylvania as provided through the City of Philadelphia's Philadelphia Authority for Industrial Development, or such other City agency as required, for the construction or benefit of the Facility upon such terms and conditions as the Building Committee shall recommend; and be it

FURTHER RESOLVED, that the appropriate officers of The Foundation be, and each of them is, authorized and directed, in the name and on behalf of The Foundation, to petition Philadelphia City Council to pass resolutions and ordinances approving the zoning and land use of the Property for the construction of the Facility as the Building Committee shall recommend; and be it

FURTHER RESOLVED, that upon the recommendation of the Building Committee, the appropriate officers of The Foundation be, and each of them is, authorized and directed, in the name and on behalf of The Foundation, to enter into a nominal rent, long-term ground lease with the City of Philadelphia, or such other related City agency as may be required, with such deletions, insertions, changes, and modifications as the officers executing the same, acting upon legal advice, may approve, and such officers' approval shall be conclusively evidenced by his or her execution of such ground lease; and be it

FURTHER RESOLVED, that upon the recommendation of the Building Committee, the appropriate officers of The Foundation be, and each of them is, authorized and directed, in the name and on behalf of The Foundation, to enter into an agreement with an architect, and such other consultants as the officers deem reasonably necessary, to develop a site plan for the Property and a design for the construction of the Facility; and be it

FURTHER RESOLVED, upon the recommendation of the Building Committee, that the Chairman and Secretary of The Foundation, are authorized and directed, on behalf of The Foundation, to execute and deliver any and all applications, contracts, deeds, leases, affidavits, and other documents or instruments, to record or file any documents, and to pay all commissions, fees, and other sums that the officer, in his or her sole discretion and on whatever terms and conditions he or she deems necessary or appropriate to obtain rights to the Property or to successfully accomplish the construction of the Facility and to take any actions that he or she deems necessary or appropriate in connection with moving The Foundation's gallery collection to the Facility; and be it

FURTHER RESOLVED, that all actions previously taken by the officers or Trustees of The Foundation in accordance with these Resolutions are ratified, confirmed, and approved in all respects.

Exhibit D



One Parkway, 10th Floor
1515 Arch Street
Philadelphia, PA 19102
www.fairmountpark.org

August 16, 2006

Dr. Robert C. Young, President
Fox Chase Cancer Center
333 Cottman Avenue
Philadelphia, PA 19111

Dear Dr. Young:

This will confirm that, at its meeting held July 24, 2006, the Fairmount Park Commission voted to approve the following resolution:

A Resolution Regarding Burholme Park – July 24, 2006

On March 9, 2005, the Commission passed a resolution that authorized the Commission President and Fairmount Park Executive Director to execute one or more agreements that would permit the Fox Chase Cancer Center to use up to 19.4 acres of Burholme Park to expand Fox Chase's research and treatment facilities.

The Commission's resolution of March 9, 2005 required that certain conditions and provisions be incorporated into any proposed agreements with Fox Chase.

The Commission's resolution of March 9, 2005 further required that all final agreements between the Commission and Fox Chase are subject to the prior review and approval of the Commission by resolution.

Accordingly, the Fairmount Park Commission resolves:

1. In accordance with its resolution of March 9, 2005, the Commission approves the proposed sub-sublease between the Fairmount Park Conservancy and Fox Chase Cancer Center as presented to the Commission today. The sub-sublease shall incorporate the changes discussed by Commission counsel and publicly confirmed by Fox Chase officials regarding the following:
 - A. If Fox Chase doesn't pay the Base Rent on time, Fox Chase will pay interest on the Base Rent from the due date until payment at Prime plus 4%.
 - B. Fox Chase will provide notice to the City and Fairmount Park Commission each time it makes a Permitted Transfer.
 - C. The Design Review Committee shall have seven days to review and comment on Fox Chase's proposed materials and mock-ups.
 - D. It shall be a condition precedent to Fox Chase exercising any of its Expansion Options that Fox Chase have fulfilled its obligations under Article 26 (regarding Additional Consideration), in addition to the other conditions precedent to the Expansion Options listed in Section 1.7.2.1.A. Those conditions precedent will apply to exercise of all the Expansion Options, not just those for Phases 3, 4 and 5.
2. The Commission authorizes the Commission President and Executive Director of Fairmount Park to negotiate and execute all additional agreements that are necessary to enable execution of the sub-sublease by the Conservancy and Fox Chase.
3. The City Solicitor is authorized to make such corrections and changes to the sub-sublease as the City Solicitor determines are in the best interests of the Commission and the City, except that any change which the Commission President determines is material is subject to the prior review and approval of the Commission by resolution.
4. The Commission President and Executive Director, together with the City Solicitor and other City officials, are authorized to take all actions necessary and



One Parkway, 10th Floor
1515 Arch Street
Philadelphia, PA 19102
www.fairmountpark.org

desirable to complete the agreements authorized by this resolution, including but not limited to petitioning the Court of Common Pleas, Orphans' Court Division, for such approval as may be required by Pennsylvania law.

THIS IS NOT A NOTICE TO PROCEED

Please continue to coordinate the details of this project with Lawrence Copeland, Senior Attorney, Law Department, City of Philadelphia.

Sincerely,

Carol J. Roache
Secretary
Fairmount Park Commission

cc: Commission President Robert N.C. Nix, III
Lawrence Copeland, Senior Attorney

Exhibit E

August 21, 2007

RESOLUTION

Philadelphia Authority for Industrial Development

The Barnes Foundation

A Resolution authorizing the Philadelphia Authority for Industrial Development (PAID) to enter into a master lease with the City of Philadelphia and a sublease with The Barnes Foundation for a portion of City-owned land on the Benjamin Franklin Parkway located between 20th and 21st Street, Benjamin Franklin Parkway, and Pennsylvania Avenue. The Barnes Foundation will construct a new +/-120,000-square-foot art education facility and gallery. The Sublease provides an Initial Term of up to four years, and an Operating Term of 99 years, with Base Rent at \$10 for the Term. The appropriate officers of PAID are hereby authorized and empowered to execute all necessary documents and agreements, and to do such other acts necessary to assist The Barnes Foundation upon such terms and conditions as they deem to be in the best interests of the Authority.

BACKGROUND

The Barnes Foundation, established by Albert C. Barnes in 1922 to "promote the advancement of education and the appreciation of the fine arts," is currently located in Lower Merion. The educational mission of The Barnes Foundation and its art galleries and collection of art works are internationally famous for their promotion of art appreciation and arboriculture, and for their unique qualities. The Barnes Foundation desires to develop, construct and operate a new art education facility, including galleries to display the Barnes Collection, in Center City Philadelphia. The new facility will provide substantial space for art education programs, as well as a gallery displaying the Barnes Collection and additional galleries for special exhibitions; facilities for conservation, research and support services; areas for visitor services, retail and events; and administrative space. The Foundation has targeted approximately \$100 million for construction and \$50 million for endowment. The City has until May 30, 2008 to vacate the Premises. If the City does not vacate the Premises by that date, then the Barnes Foundation, as its sole remedy, may terminate the Sublease.

On June 14, 2007, City Council passed an ordinance authorizing the City of Philadelphia to enter into a Master Ground Lease with PAID and under which PAID will be required to enter into a Ground Sublease with the Barnes Foundation. The City of Philadelphia has requested

that PAID act as a conduit for a lease on behalf of The Barnes Foundation. The lease will be non-recourse to PAID.

Exhibit F

City of Philadelphia



(Bill No. 070462)

AN ORDINANCE

Authorizing the President of the Fairmount Park Commission, the Executive Director of Fairmount Park, and the Commissioner of Public Property, on behalf of the City of Philadelphia, to enter into a Master Ground Lease with the Philadelphia Authority for Industrial Development ("PAID") providing for the leasing by the City to PAID of certain land and the improvements owned by the City, and under which PAID will be required to enter into a Ground Sublease between PAID and The Barnes Foundation, pursuant to which PAID will sublease the land and improvements to the Foundation for the development, construction and operation of an art education facility; authorizing City officials to take all actions necessary to accomplish the intent and purpose of this Ordinance; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA ORDAINS:

SECTION 1. The Council of the City of Philadelphia finds the following:

A. The educational mission of The Barnes Foundation ("Foundation") and its art galleries and collection of art works assembled by Dr. Albert C. Barnes are internationally famous for their promotion of art appreciation and arboriculture, and for their unique qualities;

B. The City of Philadelphia ("City") and citizens of the City will enjoy exceptional cultural and economical benefits by providing a site on which the Foundation can develop, construct and operate an art education facility, including art galleries to display those works of art assembled by Dr. Albert C. Barnes that are currently on display in the public galleries of the Lower Merion art education facility of the Foundation ("Barnes Collection"); and

C. Location of the Foundation's art education facility, including art galleries, and the Barnes Collection, in the City will greatly enhance the City's cultural resources, promote the City's international renown for its art education opportunities, and attract visitors to the City from around the nation and the world.

SECTION 2. The President of the Fairmount Park Commission, the Executive Director of Fairmount Park, and the Commissioner of Public Property, on behalf of the City, are authorized to enter into a Master Ground Lease ("Master Lease") with the Philadelphia Authority for Industrial Development ("PAID"), which provides for the leasing by the City to PAID of land and improvements owned by the City ("Premises"), and under which PAID is authorized and directed to enter into a ground sublease

City of Philadelphia

BILL NO. 070462 continued

Certified Copy

("Sublease") with the Foundation. The Premises are more particularly described in the Sublease.

SECTION 3. The Master Lease must be substantially in the form set forth in Exhibit A to this Ordinance. The Sublease must be substantially in the form set forth in Attachment 1 to the Master Lease. The City Solicitor is authorized to include in the Master Lease, and to cause PAID to include in the Sublease, other provisions the City Solicitor deems necessary or appropriate to protect the interests of the City and to make any other changes consistent with this Ordinance.

SECTION 4. The Chief Clerk of City Council shall keep on file and make available to the public for inspection during regular office hours the exhibit referred to in this Ordinance.

SECTION 5. The President of the Fairmount Park Commission, the Executive Director of Fairmount Park, the Commissioner of Public Property, the City Solicitor, and all other officials of the City, are authorized to execute all documents, including the Lease Recognition Agreement which is Exhibit H to the Sublease, and to take all actions in order to accomplish the intent and purpose of this Ordinance.

City of Philadelphia

BILL NO. 070462 continued

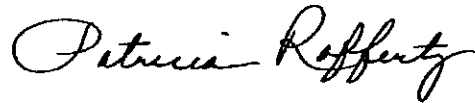
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City of Philadelphia

BILL NO. 070462 continued

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 14, 2007. The Bill was Signed by the Mayor on September 5, 2007.



Patricia Rafferty
Chief Clerk of the City Council

Exhibit G

EXHIBIT G

The Barnes Foundation Project Economic Opportunity Plan

I. PROJECT AND PLAN INTRODUCTION

The project consists of the construction and operation of a new facility (the "**Project**") by The Barnes Foundation (the "**Foundation**") to house the art collection of the late Dr. Albert Barnes that is currently displayed in the public galleries of the Foundation's facility in Lower Merion, Pennsylvania. The Project will be constructed by the Foundation in the City of Philadelphia in the block bounded by the Benjamin Franklin Parkway on the south, 20th Street on the east, 21st Street on the West and Pennsylvania Avenue on the North (the "**Site**"). The Foundation has leased the Site through a lease with the Philadelphia Authority for Industrial Development dated _____. The purpose, standards and procedures of this Economic Opportunity Plan (the "**Plan**") are the expressed wishes of the Foundation as set forth herein. Participants shall include the architect retained by the Foundation (the "**Architect**") and any other design or other professional services providers and their respective consultants, the general contractor or construction manager retained by the Foundation to construct the Project (hereinafter referred to as, the "**General Contractor**") and the General Contractor's subcontractors, and all vendors of supplies, services, equipment and materials for the Project (collectively, the "**Participants**" and each a "**Participant**"). All Participants shall be obligated to fully comply with the requirements of the Plan.

The Foundation is committed to provide meaningful and representative opportunities for minority-owned, women-owned and disabled-owned business enterprises (referred to hereafter individually, as "**MBEs**", "**WBEs**", "**DSBEs**", respectively and collectively, as "**M/W/DSBEs**"), socially and economically disadvantaged owned business enterprises (referred to hereafter as "**DBEs**") and individuals that are Philadelphia residents (referred to hereafter as "**local residents**"), in all phases of the Project. Foundation will require that all Participants commit to the commitments in this Plan. Neither Foundation nor any Participant shall (and furthermore each Participant shall ensure that their associates, partners or representatives shall not) discriminate on the basis of race, color, religion, sex, national origin, sexual orientation, gender identity, ancestry, age, or handicap in the award and performance of contracts pertaining to the Project or with respect to any and all related employment practices.

All Participants in the Project shall observe and be subject to the enforcement of all relevant City of Philadelphia, Commonwealth of Pennsylvania, and federal laws, ordinances, orders, rules and/or regulations regarding M/W/DSBEs and locally-based business enterprises. Furthermore, the Foundation shall take affirmative action, consistent with sound procurement policies and applicable laws, to ensure that M/W/DSBEs are afforded a meaningful and representative opportunity to participate in contracts relating to the Project.

For the purposes of this Plan, the term "**minority person**" means the following: African American or Black (persons having origins in any of the Black racial groups of Africa); Hispanic American (persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or

other Spanish or Portuguese culture or origin regardless of race); Asian American (persons having origins from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, Hong Kong, India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka); and Native Americans (which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians).

Agencies and representatives of the City of Philadelphia and/or Commonwealth of Pennsylvania may be consulted regarding the appropriate inclusion of M/W/DSBEs and DBEs in this Project as outlined in this Plan and with regard to its implementation.

II. PROCEDURES FOR DETERMINATION

A. **Scope/Duration.** - This Plan shall apply to contracts awarded and procurements sourced by the Foundation and all Participants throughout the construction of the Project. Applicable provisions of the Plan will be implemented by the Foundation during the operation of the new facility.

B. **Statement of Objectives.** - The objectives set forth in the Plan shall be incorporated in all requests for proposals, bid packages and solicitations for the Project and communicated to all Participants.

C. **Good Faith Efforts.** - Participants shall use best and good faith efforts (as defined hereunder) to provide appropriate participation and utilization opportunities for M/W/DSBEs, minority workers, female workers and local resident workers. All Project contractors and vendors will be required to do likewise, consistent with best and sound procurement practices, and with applicable law. Best and good faith efforts are those efforts, the scope, intensity and appropriateness of which are designed and performed to achieve the objectives of this Plan including ranges and goals expressed herein. Best and good faith efforts will be deemed adhered to when a Participant meets the criteria set forth in this Plan and demonstrates and documents its efforts throughout the duration of the Project. Each Participant must submit a Subcontracting/Vendor Plan showing how best and good faith efforts were made to achieve said ranges, even if the ranges were not met. This plan must include, but not be limited to, the following:

1. Written request for assistance to the Foundation three (3) business days prior to the bid due date.
2. Solicitation through job fairs, newspapers, periodicals, advertisements and other organizations or media that focus on construction and are owned by M/W/DSBE and/or that focus on M/W/DSBEs.
3. Telephone logs.
4. Evidence of solicitation to qualified M/W/DSBEs and DBEs certified by

the Philadelphia Minority Business Enterprise Council ("MBEC") or any successor agency, or members of the Pennsylvania Unified Certification Program ("PaUCP").

5. Bid results and (if applicable) reasons as to why no awards were made to M/W/DSBEs.
6. Use of City/MBEC-certified business firms via the MBEC directory.
7. Correspondence between the contracting firm and any M/W/DS-BE firms.
8. Attendance logs and/or records of any scheduled pre-bid or pre-proposal meeting.
9. Specific, general and technical assistance offered and provided to M/W/DSBEs related to their portion of the Project.
10. Proof there was notification of and access to bid documents at the contracting firm's office or other office locations for open and timely review.

D. Monitoring of Best and Good Faith Efforts. – The monitoring and reporting of best and good faith efforts of the Participants shall be established by the Foundation in consultation with appropriate city, state and federal agencies and/or private professional entities, and shall include (in addition to any further measures that may be required) the following:

1. Participants shall submit copies of signed contracts and purchase orders with M/W/DSBE contractors and subcontractors.
2. Participants shall be ready to provide evidence of timely payments to M/W/DSBE subcontractors, sub-consultants and supply vendors for participation verification. This documentation should be provided monthly or included with every request for payment.
3. At the conclusion of the Project, Participants shall provide evidence of the actual dollar amounts paid to M/W/DSBE contractors or subcontractors.
4. All Participants that are on-site contractors involved in the construction of the Project shall be prepared to submit "certified" payrolls listing the following items for all on-site employees:
 - a. Full name
 - b. Social security number
 - c. Full address
 - d. Trade classification (e.g., laborer, carpenter, apprentice, electrician, plumber, and foreman)
 - e. Gender

- f. Race
- g. Hours worked
- h. All withholding (e.g., laborer, local, state, FICA, etc.)
- i. Name of the contractor and name of the prime for subcontractors
- j. Name of Project

5. Certified payroll reports shall be signed by an authorized officer of the applicable Participant.

6. Participants shall comply with all applicable requirements of any federal, state or local law, ordinance, or regulation relating to contract and payroll compliance.

E. Documentation of Best and Good Faith Efforts and Compliance. Two components have been established to facilitate the inclusion of M/W/DSBEs as contractors and vendors, and minority /female/local residents as Project site workforce participants:

1. M/W/DSBE Contracting and Vending Participation Levels - the basis for each determination will be the percentage of the total dollar amount of Participant's bid/contract OR the total dollar amount of the bid/contract for the identified Project task.

2. Minority/Female/Local Resident Employment Participation Levels - the basis for each determination will be the projected total on-site field employee hours divided by the number of minority, female and local resident employee hours anticipated to be performed on the contractor's payroll, and each of the contractor's on-site subcontractors payrolls.

F. Oversight Committee. The Foundation, in consultation with the appropriate agencies and entities, will establish and identify the members of a "**Project Oversight Committee.**" The Project Oversight Committee shall include representatives of the Foundation, the Philadelphia Fairmont Park Commission, the General Contractor, a representative of the School District of Philadelphia, and the Council member of Philadelphia City Council's Fifth District (or the member's designee from the member's staff), and shall meet during all phases of the Project. The Foundation and the Project Oversight Committee will engage in monitoring, reporting and problem solving activities including regular meetings to address all matters relevant to further development of this Plan, carrying out its implementation and the successful completion of the Project. In addition, the Foundation will contract with the Greater Philadelphia Urban Affairs Coalition ("**GPUAC**") to assist the Foundation and the Project Oversight Committee in the monitoring and reporting for the Project.

III. CERTIFIED M/W/DSBES

A. Only businesses that are owned and controlled, in both form and substance, as M/W/DSBEs shall be counted towards participation under this Plan. To ensure this standard, all businesses, including joint ventures, must be certified by MBEC, or any successor agency or the

PaUCP. Both agencies are authorized to certify such enterprises.

B. M/W/DSBE certification shall not be the sole determination of a bidder's or contractor's financial or technical ability to perform specified work. The Foundation reserves the right to evaluate the contractor's or subcontractor's ability to satisfy financial, technical, or other criteria separate and apart from said certifications before bid opening. Pre-qualification conditions and requirements shall be conveyed in a fair, open and non-discriminatory manner to all.

C. The Foundation recognizes that M/W/DSBE certifications may expire or the firm may experience decertification by an authorized governmental entity. Certifications that expire during a M/W/DSBE's participation on a particular phase of the Project may be counted toward overall goals for participation ranges. However, said firm MUST become recertified prior to consideration for future range/goal credit in this Plan. If a firm has been decertified, said firm will not be eligible to participate.

IV. NON-COMPLIANCE

A. In cases where the Foundation has cause to believe that a Participant, acting in good faith, has failed to comply with the provisions of this Plan, the Foundation in consultation with the Project Oversight Committee and/or appropriate agencies and professional entities, will attempt to resolve the noncompliance through conciliation and mediation.

B. In conciliation, a Participant must satisfy the Foundation and the Project Oversight Committee that said Participant has made best and good faith efforts to achieve the agreed upon participation ranges and/or goals. Demonstration of best and good faith efforts on the part of a Participant includes:

1. Entering into a contractual relationship with the designated M/W/DSBE firm in a timely, responsive and responsible manner, and fulfilling all contractual requirements, including payments, in said manner.
2. Notifying all parties - including the Foundation, the M/W/DSBE, the Project Oversight Committee and all relevant Participants of any problems in a timely manner.
3. Requesting assistance from the Foundation and/or the Project Oversight Committee in resolving any problems with any M/W/DSBE.
4. Making every reasonable effort to appropriately facilitate successful performance of contractual duties by a M/W/DSBE through timely, clear and direct communications and reasonable business assistance.

C. In cases where the Foundation, in consultation with the Project Oversight Committee, has cause to believe that any Participant has failed to comply with the provisions of this Plan, the Foundation will conduct an investigation.

D. After affording the Participant notice and an opportunity to be heard, the

Foundation in consultation with the Project Oversight Committee, will take corrective, remedial and/or punitive action. Such actions may include, but are not limited to:

1. Declaring the Participant as non-responsible and/or non-responsive, with a determination being made that the Participant is ineligible to receive the award of a contract, ineligible to continue a contract and/or ineligible for any other future contracts affiliated with the Project;
2. Suspending the violating Participant from doing business with the Foundation;
3. Withholding payments to the violating Participant; and/or
4. Pursuing and securing any relief which the Foundation, in consultation with the Project Oversight Committee, may deem to be necessary, proper, and in the best interest of the Foundation and the Project and consistent with applicable policy and law.

V. GUIDELINES FOR JOINT VENTURING

Joint Venture relationships with certified M/W/DSBEs must meet the following criteria in order to receive credit towards the participation goals:

- A. The M/W/DSBE partner(s) must be certified by MBEC, PaUCP or an agency authorized by law to certify such enterprises prior to proposal/bid submission.
- B. The M/W/DSBE partner(s) must be substantially involved in significant phases of the contract including, but not limited to, the performance (with its own work force) of a portion of the on-site work, and of administrative responsibilities, such as bidding, planning, staffing and daily management.
- C. The business arrangements must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their respective ownership interest).
- D. If a certified partner is a M/W/DSBE, the participation will be credited only to the extent of the partner's ownership interest in the joint venture. M/W/DSBE participation ranges or goals will apply to the joint venture.

VI. PARTICIPATION RANGES AND GOALS

A. Demolitions and Construction Employment Opportunities:

In support of federal and local policies that target economic benefits to low-income residents, the Foundation shall require its contractors involved in construction of the Project (including but not limited to demolition and environmental remediation) to make best and good faith efforts to employ local Philadelphia residents. The Foundation will also require its General Contractor to use nondiscriminatory employment practices and make best and good faith efforts to employ minority and female persons in the demolition, environmental

remediation, and construction workforce consistent with work-hour goals of 25% and 5%, respectively. The Foundation will include these goals in all construction related contracts (including but not limited to demolition and environmental remediation) and will require its General Contractor to reference these work-hour goals in all of its subcontracts.

B. Permanent Employment Opportunities:

1. The Foundation shall make best and good faith efforts to assure the creation of new jobs as part of this Plan with a strong emphasis on staffing diversity in full-time and part-time positions. Of the 52 new full-time jobs expected to be created in connection with the operation of the new facility (the "**Facility**"), the Foundation shall make best and good faith efforts to meet the following minimum goals for the employment of minority persons, females and disabled persons in the operation of the Facility: 30% for minority persons, 45% for females and 2% for disabled persons.

2. The Foundation will use its best and good faith efforts to reach out to sources of employment like the Philadelphia Workforce Development Corporation, the Urban League of Philadelphia and the Jewish Employment and Vocational Services, that can refer minority, female and disabled workers. The definition of "minority" set forth in Part I shall apply to the Foundation's employment efforts.

3. In addition, the Foundation has collaborated with Lincoln University, a historically black institution of higher education, on a new Bachelor of Arts Degree program to help students prepare for careers in museum and collection studies, museum education and museum communications. Students enrolled will earn a degree from Lincoln University and they will obtain firsthand experience at the Facility.

C. Contract Opportunities:

1. **Construction Management:** The Foundation will make best and good faith efforts to engage a construction management team with at least 35% participation, with 25% participation by MBEs and 10% participation by WBEs. The Foundation shall include a provision in the contract with the General Contractor requiring that the General Contractor use best and good faith efforts to provide opportunities for MBEs and WBEs through joint venture and subcontract opportunities and shall include this Plan in the contract with the General Contractor.

2. **Architecture and Engineering and Other Professional Services:** The Foundation will make best and good faith efforts to engage a design team, including architects, engineers, and other design and professional service providers, with the stated goals of not less than 25% participation by MBEs, not less than 8% participation by WBEs and not less than 2% participation by DSBEs. These percentages for participation will be applied to the total dollar value of the architectural, engineering and other design and professional service contracts let by the Foundation, including change orders and scope adjustments.

3. **Demolition and Construction:** The Foundation shall require that the General Contractor and its subcontractors make best and good faith efforts to provide contract

opportunities for certified M/W/DSBEs with the stated goals of 25% participation by MBEs, 8% participation by WBEs and 2% participation of DSBEs. These percentages for participation will be applied to the total dollar value of all contracts let by the Foundation or the General Contractor, including all change orders and scope adjustments.

4. **Building Operations:** The Foundation may contract with third parties for security services, food services and/ or other building operations services. In consultation with GPUAC and the Oversight Committee, the Foundation will establish participation ranges for all such contracts and will apply all applicable provisions of this Plan to said contracts.

Exhibit H

EXHIBIT H

LEASE RECOGNITION AGREEMENT

THIS LEASE RECOGNITION AGREEMENT (“**Agreement**”), dated as of the _____ day of _____, 2007, is made by **THE CITY OF PHILADELPHIA**, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania (“**City**”), the **PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT**, a Pennsylvania body politic and corporation (“**PAID**”), and **THE BARNES FOUNDATION**, a Pennsylvania non-profit corporation (“**Foundation**”).

BACKGROUND

A. The City, as landlord, and PAID, as tenant, are parties to a Master Ground Lease (“**Master Lease**”) dated the same date as this Agreement, for land (“**Premises**”) described in **Exhibit A**, which is attached to this Agreement. The Master Lease, or a memorandum of the Master Lease, will be recorded in the Department of Records for the City of Philadelphia.

B. PAID, as landlord, and the Foundation, as tenant, are parties to a Ground Sublease (“**Sublease**”), dated the same date as this Agreement, that pertains to the Premises.

C. The City, PAID, and Foundation desire to set forth certain agreements which they have made that relate to the Master Lease and the Sublease.

NOW THEREFORE, the City, PAID, and the Foundation, intending to be legally bound, agree as follows:

1. The City, in its capacity as the landlord under the Master Lease, consents to and approves the execution and delivery of the Sublease. The City acknowledges and agrees that the exercise and performance of the rights and obligations of PAID and the Foundation in accordance with the provisions of the Sublease is not a breach of any of the provisions of the Master Lease.
2. If the Master Lease expires, or if the Master Lease is terminated or surrendered, whether voluntarily or involuntarily, by the City, by PAID, by operation of law or otherwise, prior to the expiration of the Term (as defined in the Sublease) of the Sublease, then so long as the Sublease remains in effect in accordance with its provisions and has not been terminated, the City, for itself, its successors and assigns, including any subsequent owner of the Premises (“**Subsequent Owner**”) and any subsequent holder of any interest of the landlord under the Master Lease (a “**Subsequent Holder**”), by this Agreement covenants with and for the benefit of the Foundation that:

(a) the Sublease and all rights created under the Sublease shall remain in full force and effect;

(b) the City and all Subsequent Owners and Subsequent Holders shall

recognize and give full effect to the Sublease and the Foundation's rights and obligations under the Sublease;

(c) whichever of the City, any Subsequent Owner, or any Subsequent Holder becomes the holder of the interest of the landlord in the Sublease ("**Successor Landlord**") will be in direct privity of estate and contract with the Foundation under the Sublease with the same force and effect as though the Sublease was originally made by the Successor Landlord with the Foundation; and

(d) upon the expiration, termination, or surrender of the Master Lease, the Successor Landlord will be bound by the provisions of the Sublease, with the same force and effect as if the Successor Landlord were the original landlord under the Sublease, but (1) the Successor Landlord will not be bound by any rent or additional rent which the Foundation may have paid for more than the current year to any prior landlord under the Sublease, and (2) the Successor Landlord will not be liable to the Foundation for any liabilities or other obligations of PAID, existing or contingent, under the Sublease which arose prior to the expiration, termination or surrender of this Master Lease.

3. Upon the expiration, termination, or surrender of the Master Lease, the Foundation, for itself, its successors and assigns, shall remain bound by and shall comply with all the provisions of the Sublease and shall attorn to and to recognize the Successor Landlord as its landlord under the Sublease for the balance of the Term of the Sublease, subject to the provisions of the Sublease.

4. The City and PAID shall not be liable to the Foundation for any failure of a Subsequent Owner or a Subsequent Holder to comply with the provisions of this Agreement or the provisions of the Master Lease or the Sublease (except to the extent that the City or PAID is a Subsequent Owner or a Subsequent Holder).

5. This Agreement inures to the benefit of, and is binding upon, the City, PAID, the Foundation, and their respective successors and assigns.

6. This Agreement does not affect or waive any failure by the Foundation to comply with all the provisions of the Sublease.

7. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to choice of law provisions.

8. **Despite any other provision of this Agreement, this Agreement and the City's recognition of the Sublease under this Agreement, do not obligate the City to appropriate or spend money at any time.**

9. Any copy of this Agreement executed with original signatures is an original of this Lease for all purposes. This Agreement may be executed in one or more

counterparts, each of which is an original, and all of which together constitute a single instrument.

[The remainder of this page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the City, PAID, and Foundation have caused this Agreement to be executed as of the date stated in the preamble.

APPROVED AS TO FORM:
Romulo L. Diaz, Jr.,
City Solicitor

THE CITY OF PHILADELPHIA

By: _____
Robert N. C. Nix, III, President
Fairmount Park Commission

Per: _____
Lawrence K. Copeland
Senior Attorney

By: _____
Mark A. Focht, Executive Director
Fairmount Park

By: _____
Joan Schlotterbeck, Commissioner
Public Property Department

**PHILADELPHIA AUTHORITY FOR
INDUSTRIAL DEVELOPMENT**

By: _____
Chairman

By: _____
Secretary

THE BARNES FOUNDATION

By: _____
Name: Dr. Bernard C. Watson
Title: Chair

Attest: _____
Name: Jacqueline F. Allen
Title: Secretary

STATE OF PENNSYLVANIA :
 :SS
COUNTY OF PHILADELPHIA :

On this, the ____ day of _____, 2007, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____ who acknowledged (himself)(herself) to be the President of the Fairmount Park Commission of THE CITY OF PHILADELPHIA, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania, and that (he)(she), being authorized to do so, executed the foregoing Lease Recognition Agreement on behalf of THE CITY OF PHILADELPHIA as the President of the Fairmount Park Commission.

IN WITNESS WHEREOF, I set my hand and Notarial seal below.

My Commission Expires:

NOTARY PUBLIC

[NOTARIAL SEAL]

STATE OF PENNSYLVANIA :
 :SS
COUNTY OF PHILADELPHIA :

On this, the ____ day of _____, 2007, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____ who acknowledged (himself)(herself) to be the Executive Director of Fairmount Park of THE CITY OF PHILADELPHIA, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania, and that (he)(she), being authorized to do so, executed the foregoing Lease Recognition Agreement on behalf of THE CITY OF PHILADELPHIA as the Executive Director of Fairmount Park.

IN WITNESS WHEREOF, I set my hand and Notarial seal below.

My Commission Expires:

NOTARY PUBLIC

[NOTARIAL SEAL]

STATE OF PENNSYLVANIA :
 :ss
COUNTY OF PHILADELPHIA :

On this, the ____ day of _____, 2007, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____ who acknowledged (himself)(herself) to be the Commissioner of the Department of Public Property of THE CITY OF PHILADELPHIA, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania, and that (he)(she), being authorized to do so, executed the foregoing Lease Recognition Agreement on behalf of THE CITY OF PHILADELPHIA as the Commissioner of the Department of Public Property.

IN WITNESS WHEREOF, I set my hand and Notarial seal below.

My Commission Expires:

NOTARY PUBLIC

[NOTARIAL SEAL]

STATE OF PENNSYLVANIA :
 :SS
COUNTY OF PHILADELPHIA :

On this, the ____ day of _____, 2007, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____ who acknowledged himself (herself) to be the Chairman of the PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT and that he/she, being authorized to do so, executed the foregoing Lease Recognition Agreement on behalf of the said PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT, as such Chairman.

IN WITNESS WHEREOF, I set my hand and Notarial seal below.

My Commission Expires:

NOTARY PUBLIC

[NOTARIAL SEAL]

STATE OF PENNSYLVANIA :
 :ss
COUNTY OF PHILADELPHIA :

On this, the ____ day of _____, 2007, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____ who acknowledged himself/herself to be the _____ of THE BARNES FOUNDATION, a Pennsylvania non-profit corporation and that he/she, being authorized to do so, executed the foregoing Lease Recognition Agreement on behalf of the said THE BARNES FOUNDATION, as such _____.

IN WITNESS WHEREOF, I set my hand and Notarial seal below.

My Commission Expires:

NOTARY PUBLIC

[NOTARIAL SEAL]

EXHIBIT A
Legal Description of Land

Exhibit I

EXHIBIT I

FORM OF MEMORANDUM OF SUBLEASE

MEMORANDUM OF SUBLEASE

The PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT, a body politic and corporate existing under the laws of the Commonwealth of Pennsylvania (“**Landlord**”), having a mailing address of 2600 Centre Square West, 1500 Market Street, Philadelphia, Pennsylvania 19102, by a Ground Sublease dated _____, 2007 (“**Sublease**”), has subleased to THE BARNES FOUNDATION, a Pennsylvania non-profit corporation (“**Tenant**”), having a mailing address of 300 North Latches Lane, Merion, Pennsylvania 19066, ALL THAT CERTAIN PARCEL OF LAND situate in the City of Philadelphia, Pennsylvania, which is described on Exhibit A attached hereto and hereby made a part hereof (“**Premises**”).

The Sublease became effective on _____, 2007. As is more particularly provided in the Sublease, the Initial Term (as said term is defined in the Sublease) of the Sublease is anticipated to commence in 2008 and to expire by no later than 2011, subject to adjustment as provided in the Sublease. As is more particularly provided in the Sublease, upon the expiration of the Initial Term, the Operating Term (as said term is defined in the Sublease) commences and continues for approximately ninety-nine (99) years thereafter.

As more particularly provided in the Sublease, Tenant has certain preferential rights to purchase and to lease the Premises.

Nothing contained in this Memorandum of Sublease is intended or shall be construed to modify or amend any of the provisions of the Sublease, which shall prevail over the provisions of this Memorandum of Sublease.

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

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

IN WITNESS WHEREOF, the parties have signed below this _____ day of _____, 200__.

THE PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT

By: _____
Chairman

By: _____
Secretary

THE BARNES FOUNDATION

By: _____
Name: Dr. Bernard C. Watson
Title: Chair

Attest: _____
Name: Jacqueline F. Allen
Title: Secretary

COMMONWEALTH OF PENNSYLVANIA :
 : SS.
COUNTY OF PHILADELPHIA :

On this, the ____ day of _____, 200__, before me, a notary public in and for the state and county aforesaid, personally appeared _____, who acknowledged himself/herself to be the _____ of the PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT, a body corporate and politic existing under the laws of the Commonwealth of Pennsylvania, and that he/she, as such officer, being authorized to do so, executed the foregoing instrument by signing the name of the PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT by himself/herself as such officer.

IN WITNESS WHEREOF, I have signed below the day and year aforesaid.

Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA :

: SS.

COUNTY OF PHILADELPHIA :

On this, the ____ day of _____, 200__, before me, a notary public in and for the state and county aforesaid, personally appeared _____, who acknowledged himself/herself to be the _____ of THE BARNES FOUNDATION, a Pennsylvania non-profit corporation, and that he/she, as such officer, being authorized to do so, executed the foregoing instrument, by signing the name of THE BARNES FOUNDATION by himself/herself as such officer.

IN WITNESS WHEREOF, I have signed below the day and year aforesaid.

Notary Public

My Commission Expires:

Exhibit 2

MEMORANDUM OF LEASE

The CITY OF PHILADELPHIA, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania ("**Landlord**"), by a Master Ground Lease dated _____, 2007 ("**Lease**"), has leased to the PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT, a body politic and corporate existing under the laws of the Commonwealth of Pennsylvania ("**Tenant**"), having a mailing address of 2600 Centre Square West, 1500 Market Street, Philadelphia, Pennsylvania 19102, ALL THAT CERTAIN PARCEL OF LAND situate in the City of Philadelphia, Pennsylvania, which is described on Exhibit A attached hereto and hereby made a part hereof ("**Premises**").

The Lease became effective on _____, 2007. As is more particularly provided in the Lease, the Master Lease Initial Term (as said term is defined in the Lease) of the Lease is anticipated to commence in 2008 and to expire by no later than 2011, subject to adjustment as provided in the Lease. As is more particularly provided in the Lease, upon the expiration of the Master Lease Initial Term, the Master Lease Operating Term (as said term is defined in the Lease) commences and continues for approximately ninety-nine (99) years thereafter.

As more particularly provided in the Lease, Tenant has certain preferential rights to purchase and to lease the Premises.

Nothing contained in this Memorandum of Lease is intended or shall be construed to modify or amend any of the provisions of the Lease, which shall prevail over the provisions of this Memorandum of Lease.

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

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

IN WITNESS WHEREOF, the parties have signed below this _____ day of _____, 200__.

LANDLORD:

**CITY OF PHILADELPHIA
FAIRMOUNT PARK COMMISSION**

Robert N.C. Nix, III, President

Mark A. Focht, Executive Director, Fairmount Park

DEPARTMENT OF PUBLIC PROPERTY

Joan Schlotterbeck, Commissioner, Public Property

TENANT:

CORPORATE SEAL:

**PHILADELPHIA AUTHORITY FOR INDUSTRIAL
DEVELOPMENT**

By: _____
Chairman/Vice President

By: _____
Secretary/Treasurer

COMMONWEALTH OF PENNSYLVANIA :
 : SS.
COUNTY OF PHILADELPHIA :

On this, the ____ day of _____, 200__, before me, a notary public in and for the state and county aforesaid, personally appeared _____, who acknowledged himself/herself to be the _____ of the PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT, a body corporate and politic existing under the laws of the Commonwealth of Pennsylvania, and that he/she, as such officer, being authorized to do so, executed the foregoing instrument by signing the name of the PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT by himself/herself as such officer.

IN WITNESS WHEREOF, I have signed below the day and year aforesaid.

Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA :
 : SS.
COUNTY OF PHILADELPHIA :

On this, the ____ day of _____, 2007, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____ who acknowledged (himself)(herself) to be the President of the Fairmount Park Commission of THE CITY OF PHILADELPHIA, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania, and that (he)(she), being authorized to do so, executed the foregoing Lease Recognition Agreement on behalf of THE CITY OF PHILADELPHIA as the President of the Fairmount Park Commission.

IN WITNESS WHEREOF, I have signed below the day and year aforesaid.

Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA :
 : SS.
COUNTY OF PHILADELPHIA :

On this, the ____ day of _____, 2007, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____ who acknowledged (himself)(herself) to be the Executive Director of Fairmount Park of THE CITY OF PHILADELPHIA, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania, and that (he)(she), being authorized to do so, executed the foregoing Lease Recognition Agreement on behalf of THE CITY OF PHILADELPHIA as the Executive Director of Fairmount Park.

IN WITNESS WHEREOF, I set my hand and Notarial seal below.

My Commission Expires:

NOTARY PUBLIC

[NOTARIAL SEAL]

COMMONWEALTH OF PENNSYLVANIA :
 : SS.
COUNTY OF PHILADELPHIA :

On this, the ____ day of _____, 2007, before me, a Notary Public in and for the Commonwealth of Pennsylvania, the undersigned officer, personally appeared _____ who acknowledged (himself)(herself) to be the Commissioner of the Department of Public Property of THE CITY OF PHILADELPHIA, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania, and that (he)(she), being authorized to do so, executed the foregoing Lease Recognition Agreement on behalf of THE CITY OF PHILADELPHIA as the Commissioner of the Department of Public Property.

IN WITNESS WHEREOF, I set my hand and Notarial seal below.

My Commission Expires:

NOTARY PUBLIC

[NOTARIAL SEAL]

EXHIBIT A
THE PREMISES

All the land bounded by Benjamin Franklin Parkway, 20th Street, Pennsylvania Avenue, and 21st Street, and generally described as follows:

ALL THAT CERTAIN lot or piece of ground, SITUATE in the 8th Ward of the City of Philadelphia, and described in accordance with a City Plan #63 confirmed 10/4/1993 by the Board of Surveyors, to wit:

BEGINNING at the point formed by the intersection of westerly side of 20th Street (variable width, 70' wide at this point) with the northeasterly House Line of The Benjamin Franklin Parkway (250' wide);

THENCE extending N 44°20'50" W, along the northeasterly House Line of said Benjamin Franklin Parkway, the distance of 571.958' to the point of intersection with the easterly side of 21st Street (70' wide);

THENCE extending N 11°30'21" E, along the easterly side of said 21st Street, the distance of 341.498' to a point of curvature;

THENCE extending along the arc of a circle, curving to the right, having a radius of 14.140', the arc distance of 25.173' to a point of tangency on the southwesterly side of Pennsylvania Avenue (64' wide);

THENCE extending S 44°20'50" E, along the southwesterly side of said Pennsylvania Avenue, the distance of 48.538', to a point of curvature.

THENCE continuing along the southwesterly side of said Pennsylvania Avenue, along the arc of a circle, curving to the right, having a radius of 100', the arc distance of 24.439' to a point of tangency on the southwesterly side of said Pennsylvania Avenue;

THENCE continuing S 52°29'29" E, along the southwesterly side of said Pennsylvania Avenue, the distance of 427.766', to the point of intersection with the westerly side of said 20th Street (50' wide at this point).

THENCE extending S 11°21'00" W, along the westerly side of said 20th Street, the distance of 470.813' to the point of intersection with the northeasterly side of said Benjamin Franklin Parkway, being first mentioned point and place of BEGINNING.

CONTAINING in area 200,044 Sq. Ft. or 4.5924 acres, more or less.