

**will make application and secure the necessary permit from the Metropolitan Water Reclamation District of Greater Chicago and all governmental and regulatory agencies having jurisdiction thereof before discharging any of the aforesaid sewage, industrial waste or other water-carried wastes into any intercepting sewers.**

- J. It is agreed by and between the parties hereto that Lessee shall submit to the Executive Director of Lessor for his approval, the general plans for handling the sewerage, grading, and drainage of the Demised Premises; and for any roadways, water supply, telephone and electric service, if any, and of all improvements or any other construction to be erected thereon, before the commencement of any work thereon. As part of the review of plans submitted for the construction of Improvements on the Demised Premises, the District will evaluate the materials used for any potential negative impact and unreasonable environmental risk to the Demised Premises.**
- K. Lessor reserves to itself the right of access to the North Shore Channel as well as right of access to the Demised Premises for inspection by Lessor and its duly accredited agents at all times, and for such surveys or any other purposes as the Executive Director of Lessor may deem necessary.**
- L. Any blockage or restriction of flow in the waterway will not be tolerated at any time. No construction or improvements of any kind can project into the waterway during construction or after permanent repairs are contemplated.**
- M. Lessee shall take all necessary precautions to keep these structures, and all District structures located on the Demised Premises, protected at all times, shall compensate Lessor in the event Lessee, or anyone acting under Lessee's direction, causes damage of any kind to such structures to the extent necessary to fully repair such damage, and shall provide Lessor with uninterrupted access to such structures at all times. Prior to performing any excavation or other work on or near such structures, Lessee shall submit plans detailing such work to Lessor for review and approval, and shall perform the subsequent work in conformity with the plans so approved by Lessor in writing.**
- N. If Lessee is unable to utilize the Demised Premises for the purposes permitted hereunder as a result of the aforementioned engineering reservations, as determined by the Executive Director**

of the Lessor, Lessee shall have the right to terminate this Lease as provided herein.

#### **5.02 STORMWATER MANAGEMENT REQUIREMENTS**

Lessee shall submit to Lessor for its review and approval written plans detailing Lessee's plans for managing stormwater and drainage on the Demised Premises. The approval of Lessee's stormwater management plans shall be within the sole discretion of Lessor.

Lessee's plans shall provide for the separate collection of all roof water and surface run-off from grounds and roadways; shall comply with all applicable rules, regulations, ordinances, statutes, and laws pertaining to stormwater management, wetlands management, and flood plains; and shall, whenever feasible, employ Best Management Practices (BMP). BMPs may include, but are not limited to, green roofs, natural landscaping, filter strips, rain gardens, drainage swales, and naturalized detention basins. Stormwater unable to be managed by BMPs will be discharged to the North Shore Channel in a manner acceptable to Lessor.

#### **5.03 SPECIFIC ENGINEERING, DESIGN AND OPERATING RESERVATIONS AND RESTRICTIONS. (CLARIFICATION -- NOT LIMITATION)**

In accordance with the Consent Decree and the District's Comprehensive Land Use Policy, Lessee shall pay for and include green infrastructure on its leasehold. A "Green Infrastructure Land-Use Policy Form for Public Leases" must be filled out completely and signed by the authorized representatives of both Lessee and the District concurrent with the signing of this Lease. The form, when completed and signed, shall be attached hereto as Exhibit "C".

The amount of green infrastructure to be provided shall be determined by what is referred to as "Design Retention Capacity" or "DRC" as defined in the Comprehensive Land Use Policy. Where authorized in the Comprehensive Land Use Policy, Lessee can, and is encouraged to, design, implement, operate, and maintain green infrastructure on other lands owned by Lessee, in lieu of, or in addition to, Lessee installing green infrastructure on its leasehold with the District. Such offsite green infrastructure is subject to the same retention standards enunciated above. The responsibility for ongoing maintenance and operation shall be borne exclusively by Lessee, and shall be a covenant running with the land where the off-site green infrastructure is provided for the duration of the Lease.

The District must approve in writing all green infrastructure projects under this section before green infrastructure may count towards satisfying the obligations created hereunder. Approval will be given at the District's sole discretion. Acceptable green infrastructure technologies include, but are not limited to, rain gardens, native plants/landscaping, stormwater trees, porous/permeable pavement, bio-swales, green roofs and greenways.

Compliance with the minimum requirements of federal, state, or local law or regulation, including the District's ordinances, regulations, or policies (other than the green infrastructure requirements under the District's Comprehensive Land Use Policy) will not satisfy the green infrastructure requirement that is to be provided under this section. Accordingly, compliance with the District's Waterway Strategy and the District's Watershed Management Ordinance ("WMO") will not count towards the green infrastructure that is to be provided herein. For purposes of this section, the District's ordinances, regulations, and policies, including the WMO, shall apply to all District properties, whether located in Cook County (including the City of Chicago) or other counties in the state of Illinois.

Upon request by Lessor, Lessee shall provide the District with an annual certification, due on each anniversary of the date of this Lease, attesting that approved green infrastructure has been properly maintained. The certification shall be made on a form prepared and provided by the District. Failure to maintain approved green infrastructure, whether pertaining to the Demised Premises or locations off-site, if provided by Lessee, throughout the term of this Lease, or failure to properly and accurately certify to the maintenance of approved green infrastructure, shall be grounds for termination of this Lease by the District. Similarly, knowingly providing untrue or inaccurate information in the "Green Infrastructure Program" form shall likewise be grounds for termination of this Lease by the District. The District reserves the right to inspect the Demised Premises throughout the duration of this Lease to verify approved green infrastructure has been properly installed and maintained, provided any damage caused by such inspection shall be repaired at the sole cost and expense of Lessor and in such timeframe as to minimize any interference with the use of any improvements so damaged. The District further reserves the right to require Lessee to amend its green infrastructure plan, even if previously approved by the District. Should such an amendment or subsequent amendments be requested by the District, Lessee shall thereafter, within a reasonable amount of time, install green infrastructure in conformity with the District's request(s).

The parties acknowledge that Lessee has submitted and Lessor has approved the green infrastructure project required under this Lease and that such project satisfies the green infrastructure requirements of the Consent Decree, the District's Comprehensive Land Use Policy, and this Lease.

## **ARTICLE SIX**

### **PROVISIONS FOR BUILDING AND IMPROVEMENTS**

#### **6.01 CONSTRUCTION REQUIREMENT**

Lessee agrees within N/A year(s) from the date hereof to improve the Demised Premises by the construction thereon of the hereinafter called "improvements", free and clear of all mechanics and materialman's liens, claims,

charges or unpaid bills capable of being made liens and to design, construct, operate and maintain in full compliance with all applicable building and zoning laws of any agency having jurisdiction thereof. All plans must be approved in writing by the Executive Director of Lessor prior to commencement of construction.

#### **6.02 TIME OF CONSTRUCTION**

Construction of the improvements shall commence within N/A year(s) of the effective date of this Lease. All of said buildings and improvements shall be completed within N/A year(s) of the effective date of the Lease. In the event said improvements are not completed or construction is not commenced as provided above, then Lessor may at its option terminate this Lease upon giving ninety (90) days notice, in writing, to Lessee.

#### **6.03 IMPROVEMENTS REVERT TO LESSOR AT LEASE TERMINATION OR EXPIRATION**

It is expressly understood and agreed by and between the parties hereto that upon the termination of this Lease by forfeiture, lapse of time or by reason of the failure by Lessee to keep and perform the covenants, agreements or conditions herein contained, any buildings or other improvements erected, constructed or placed upon the Demised Premises during the term hereof shall become and be the absolute property of Lessor and no compensation therefor shall be allowed or paid to Lessee except as stated in Article 3.09. Lessee shall surrender same in good and proper condition, with all fixtures and appurtenances in place and in good working order, ordinary wear and tear excepted. Lessee shall not commit waste during the term hereof or in the course of vacating same.

### **ARTICLE SEVEN**

#### **7.01 NOTICES**

All notices herein provided for from Lessor to Lessee or Lessee to Lessor shall be personally served or mailed by U. S. Registered or Certified Mail, Return Receipt Requested, First Class Postage Prepaid addressed to Lessee at:

**Chicago Board of Education  
42 W. Madison Street, 3<sup>rd</sup> Floor  
Chicago, Illinois 60602  
Attn: Chief Operating Officer and Director of Real Estate  
Email: [cemayfield@cps.edu](mailto:cemayfield@cps.edu); [smstults@cps.edu](mailto:smstults@cps.edu)**

**With copies to: Board of Education of City of Chicago  
Attn: General Counsel  
Address: 1 N. Dearborn Street, 9<sup>th</sup> Floor  
Chicago, Illinois 60602  
F: 773-553-1702**

Email: [rverma@cps.edu](mailto:rverma@cps.edu)

or to Lessor at: **Metropolitan Water Reclamation District  
of Greater Chicago  
100 East Erle Street  
Chicago, Illinois 60611  
Attn: Executive Director**

or any other address either party may designate in writing. Any notice so mailed by one party hereto to the other shall be and is hereby declared to be sufficient notice for all the purposes of this Lease and that a post office registry receipt showing the mailing of such notice and the date of such mailing shall be accepted in any court of record as competent prima facie evidence of those facts.

#### **7.02 RIGHT TO DECLARE LEASE TERMINATED**

It is understood and agreed by Lessee that neither the right given in this Lease to Lessor to collect rent or such other compensation as may be due under the terms of this Lease by sale nor any proceedings under this Lease shall in any way affect the right of Lessor to declare this Lease terminated and the term hereby created ended as above provided, upon default of or failure by Lessee to perform and carry out any of the provisions of this Lease, as herein provided, after notices as aforesaid. And Lessee, for itself and its assigns, hereby waives its right to any notice from Lessor of its election to declare this Lease at an end under any of the provisions hereof or to any demand for the payment of rent or the possession of the Demised Premises, except as aforesaid.

#### **7.03 RIGHTS OF LESSOR IN EVENT OF FORFEITURE OR TERMINATION**

In the event of the termination of this Lease by reason of forfeiture by Lessee arising from a default by or failure of it to carry out and perform any of the covenants herein contained, Lessor shall not be obligated to refund to Lessee any sums of money paid by Lessee to Lessor as rentals under the terms of this Lease, and such sums of money shall be retained by Lessor as liquidated damages, but this provision shall not operate to relieve Lessee of its obligation to pay to Lessor the balance of the rental then due Lessor for the entire term of this Lease.

#### **7.04 ABANDONMENT**

Lessee shall not without the prior written approval of Lessor abandon or vacate the Demised Premises or cease to operate its business thereon. Re-entry and repossession by Lessor following abandonment by Lessee shall not constitute a waiver of any rights of Lessor and shall not be construed as a termination of the Lease. Lessee shall remain liable for all its obligations under the Lease. For purposes of this section, leasehold shall be deemed abandoned if Lessee ceases business on the Demised Premises for a period of twelve (12) consecutive months.

#### **7.05 TERMS OF LEASE BINDING ON SUCCESSOR AND ASSIGNS**

**The parties hereto agree that all of the terms and conditions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors, lessees, sub-lessees and assigns; and whenever in this Lease reference to either of the parties hereto is made, such reference shall be deemed to include, where applicable, also a reference to the successors, lessees, sub-lessees and assigns of such party; and all the conditions and covenants of this Lease shall be construed as covenants running with the land during the term of this Lease.**

#### **7.06 NO ASSIGNMENT OR SUBLEASE**

**It is agreed by and between the parties that Lessee shall not sublet or assign any part of this Lease to any other governmental agency, individual, partnership, joint venture, corporation, land trust or other entity without prior written consent of Lessor.**

**Lessee shall notify Lessor in writing not less than sixty (60) days prior to any proposed sublease or assignment. Lessee shall identify the name and address of the proposed assignee/sublessee and deliver to Lessor original or certified copies of the proposed assignment, a recital of assignee's personal and financial ability to comply with all the terms and conditions of the Lease and any other information or documentation requested by Lessor. Lessor shall not unreasonably withhold the consent to assignment or sublease.**

**It is agreed that reasonable grounds for withholding consent shall include but not be limited to the following:**

- A. The proposed activity of the assignee/sublessee does not conform with the terms of this Lease or policies established by Lessor.**
- B. The proposed assignee/sublessee does not have either substantial experience in the business provided for in the Lease or the financial resources to comply with the requirements of the Lease.**
- C. There is an existing violation of or uncured default by Lessee with respect to the Lease.**
- D. The activity of the proposed assignee/sublessee would substantially interfere with or disturb neighboring tenants or owners.**

**It is agreed that this Lease shall not pass by operation of law to any trustee or receiver in bankruptcy or for the assignment for the benefit of creditors of Lessee.**

**Any attempted sublease or assignment not in compliance with this section shall be void and without force and effect. Additionally, Lessor shall retain 100% of all sublease fees received by Lessor under any unauthorized sublease.**

## **ARTICLE EIGHT**

### **MISCELLANEOUS PROVISIONS**

#### **8.01 LESSEE MAY IMPEAD THE METROPOLITAN WATER RECLAMATION DISTRICT IN REAL ESTATE LITIGATION**

**Lessee may, after notice in writing to Lessor, implead Lessor as a party at any time during the term of this Lease, in any litigation concerning the Demised Premises in which Lessor is a necessary party.**

#### **8.02 LESSEE TO PAY ALL COSTS OF ENFORCEMENT**

**Lessee agrees to pay and discharge all costs and reasonable attorney's fees and expenses, which Lessor shall incur in enforcing the covenants of this Lease. Provided, however, no such cost and fees shall be due and payable unless Lessee has defaulted after an opportunity to cure as provided hereunder and Lessor has commenced a legal proceeding to enforce such default.**

#### **8.03 HEADINGS ARE FOR CONVENIENCE OF PARTIES**

**All paragraph headings of this Lease are inserted for purposes of reference and convenience of the parties only, and do not constitute operative provisions of the Lease.**

#### **8.04 COMPLIANCE WITH WATERWAY STRATEGY RESOLUTION**

**To the extent that the Demised Premises embrace or abut a waterway regulated by Lessor or in which Lessor asserts property rights, Lessee shall to the extent applicable, comply with the Waterway Strategy Resolution and Implementation Criteria therefor, the River Edge Renaissance Program and the Revised Leasing Criteria for the North Shore Channel Right-of-Way Lands of Lessor's Board of Commissioners in the execution of its development plan for the Demised Premises which abut any such waterway and Demised Premises which afford Lessee direct access thereto may be utilized by Lessee for the purpose of waterborne commerce. However, Lessee will be responsible for the construction and maintenance of any docking facility at its own cost and expense which is compatible with the Waterway Strategy Resolution to maintain the bank in an aesthetically pleasing**

**condition. Permanent storage of bulk commodities, unsightly materials and/or debris on waterway side of the scenic berm or the docking area is prohibited.**

**It is the intent of Lessor to maintain, where possible, a "natural" appearance to its properties by retaining existing vegetative cover. However, Lessor recognizes that site development will sometimes necessitate the removal of existing vegetative cover. In those cases Lessor may require Lessee to re-establish vegetative cover in the same quantities and qualities as those removed. The re-established plant materials are to be considered as an addition to the landscaping required within the scenic easement.**

**Lessee will comply with all applicable local zoning and setback requirements. Lessor reserves the right to traverse the Demised Premises to access the waterway which abuts the Demised Premises.**

**Lessor's Board of Commissioners has heretofore adopted its Waterway Strategy Resolution relating to the development of leased waterways property. Lessee shall implement the beautification plan described in the attached Exhibit "D". Lessee shall comply with all applications of said Resolution in its use and development of the Demised Premises. Lessee's method of compliance therewith shall be approved by Lessor's Executive Director in writing.**

**Lessor acknowledges that this provision is not applicable as the leasehold is 60 feet or more from the waterway.**

#### **8.05 PUBLIC SERVICE PROMOTIONAL SIGNAGE**

**Lessee shall, during the term of this Lease, at its sole cost and expense, construct, erect and maintain, at one or more prominent locations on the Demised Premises, tastefully designed and constructed permanent signs which acknowledge the cooperation and support of Lessor in connection with Lessee's use of the Demised Premises. The style, text and size of the sign(s) shall be approved in advance of erection thereof by the Executive Director of Lessor, and shall, at a minimum, state that:**

**"THIS FACILITY IS PROVIDED IN PART AS A COMMUNITY SERVICE WITH THE COOPERATION AND SUPPORT OF THE METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO."**

#### **8.06 TREE MITIGATION**

- A. No alterations, construction or maintenance work upon the Demised Premises involving any material change in the location, installation or construction of facilities, or involving the removal of any trees on District property, shall be performed by any person or municipality without having first obtained District approval. However, Lessee may conduct routine trimming of trees, brush or**



**other overgrown vegetation to the extent it interferes with the safety or proper functioning of any improvements. Lessor acknowledges that Lessee may need to trim or remove some trees within or adjacent to the Demised Premises for the planned development of Lessee's property. Prior District approval is required to the remove of any trees on Lessor's property.**

- B. If the proper maintenance and operation of facilities or improvements on the Demised Premises necessitates the removal of any trees on District property, Lessee shall give no less than 14-day written notice, exclusive of Saturdays, Sundays and holidays, of its intent to remove any trees on the Demised Premises, setting forth the number, location and species of trees to be removed.**
- C. Subject to Article 8.06(A) above, Lessee shall submit to the District a plan to replace any trees removed that provides for planting the same or greater number and quality of trees on the Demised Premises, or on alternate areas owned by the District as designated and approved in writing by the District.**
- D. Lessee is responsible for obtaining any local permits necessary for tree removal.**

#### **ARTICLE NINE**

##### **LEASEHOLDS WITH EXISTING IMPROVEMENTS**

###### **9.01 LESSEE WILL NOT ALLOW WASTE TO IMPROVEMENTS**

**Lessee will keep the leasehold improvements safe, clean and in good order, repair and condition which shall include all necessary—replacement, repair and decorating. Lessee will not allow the improvements to become damaged or diminished in value, ordinary wear and tear excepted, by anyone or by any cause.**

###### **9.02 CONDITION OF DEMISED PREMISES AND IMPROVEMENTS NOT WARRANTED**

**Lessee expressly acknowledges that Lessor has made no representations, warranties express or implied, as to the adequacy, fitness or condition of Demised Premises or the improvements upon the Demised Premises for the purpose set forth in Article Three, Paragraph 3.07 hereof or for any other purpose or use express or implied by Lessee. Lessee accepts the Demised Premises and the improvements thereon, if any, "AS-IS" and "WITH ALL FAULTS". Lessee acknowledges that it has inspected the Demised Premises and has satisfied itself as to the adequacy, fitness and condition thereof.**

### **9.03 MODIFICATION OF IMPROVEMENTS**

**No modification of the leasehold improvements shall be made by Lessee without the prior written approval of Lessor and compliance by Lessee with all other terms of this Agreement.**

### **9.04 PLAT OF SURVEY AND LEGAL DESCRIPTION**

**Lessee understands and agrees that in the event the legal description and plat attached hereto are not legally sufficient for acceptance for recordation of this Lease by the Recorder of Deeds of the county in which the Demised Premises are located, Lessee shall procure, at its own expense, a plat of survey and legal description of the Demised Premises prepared and certified in writing by a Registered Illinois Land Surveyor, within twenty-one (21) days of the execution date hereof. Said plat of survey and legal description shall be reasonably satisfactory to and approved by Lessor's Executive Director in writing. Failure to timely procure and receive approval of said plat of survey and legal description shall be grounds for termination of this Lease upon prior written notice to Lessee and opportunity to cure. Lessor reserves the right and Lessee concurs that Lessor shall insert said legal description and plat of survey into this Lease Agreement as Exhibit "A", upon the approval thereof by District's Executive Director, without further affirmative act by either party hereto.**

## **ARTICLE TEN**

### **GENERAL ENVIRONMENTAL PROVISIONS**

#### **10.01 DEFINITIONS**

**A. "Environmental Laws" shall mean all present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations and similar items, of all government agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, state and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, orders, notices or demands relating to industrial hygiene, and the protection of human health or safety from exposure to Hazardous Materials, or the protection of the environment in any respect, including without limitation:**

- (1) all requirements, including, without limitation, those pertaining to notification, warning, reporting, licensing, permitting, investigation, and remediation of the presence, creation, manufacture, processing, use, management, distribution, transportation,**

**treatment, storage, disposal, handling, or release of Hazardous Materials;**

- (2) all requirements pertaining to the protection of employees or the public from exposure to Hazardous Materials or injuries or harm associated therewith; and**
- (3) the Comprehensive Environmental Response, Compensation and Liability Act (Superfund or CERCLA) (42 U.S.C. Sec. 9601 et seq.), the Resource Conservation and Recovery Act (Solid Waste Disposal Act or RCRA)(42 U.S.C. Sec. 6901 et seq.), Clean Air Act (42 U.S.C. Sec 7401 et seq.), the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. Sec, 1251 et seq.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. Sec. 11001 et seq.), the Toxic Substances Control Act (15 U.S.C. Sec, 2601 et seq.), the National Environmental Policy Act (42 U.S.C. Sec. 4321 et seq.), the Rivers and Harbors Act of 1988 (33 U.S.C. Sec. 401 et seq.), the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the Safe Drinking Water Act (42 U.S.C. Sec. 300(f) et seq., the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.) and all rules, regulations and guidance documents promulgated or published thereunder, Occupational Safety and Health Act (29 U.S.C. Sec. 651 et seq.) and all similar state, local and municipal laws relating to public health, safety or the environment.**

**B. "Hazardous Materials" shall mean:**

- (1) any and all asbestos, natural gas, synthetic gas, liquefied natural gas, gasoline, diesel fuel, petroleum, petroleum products, petroleum hydrocarbons, petroleum by-products, petroleum derivatives, crude oil and any fraction of it, polychlorinated biphenyls (PCBs), trichloroethylene, urea formaldehyde and radon gas;**
- (2) any substance (whether solid, liquid or gaseous in nature), the presence of which (without regard to action level, concentration or quantity threshold) requires investigation or remediation under any**

**federal, state or local statute, regulation, ordinance, order, action, policy or common law;**

- (3) any substance (whether solid, liquid or gaseous in nature) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous or dangerous;**
- (4) any substance (whether solid, liquid or gaseous in nature) the presence of which could cause or threaten to cause a nuisance upon the Demised Premises or to adjacent properties or pose or threaten to pose a hazardous threat to the health or safety of persons on or about such properties;**
- (5) any substance (whether solid, liquid or gaseous in nature) the presence in of which on adjacent properties could constitute trespass by or against Lessee or Lessor;**
- (6) any materials, waste, chemicals and substances, whether solid, liquid or gaseous in nature, now or hereafter defined, listed, characterized or referred to in any Environmental Laws as "hazardous substances," "hazardous waste," "infectious waste," "medical waste," "extremely hazardous waste," "hazardous materials," "toxic chemicals," "toxic substances," "toxic waste," "toxic materials," "contaminants," "pollutants," "carcinogens," "reproductive toxicants," or any variant or similar designations;**
- (7) any other substance (whether solid, liquid or gaseous in nature) which is now or hereafter regulated or controlled under any Environmental Laws (without regard to the action levels, concentrations or quantity thresholds specified herein); or**
- (8) any result of the mixing or addition of any of the substances described in this Subsection B with or to other materials.**

**C. "Phase I Environmental Assessment" shall mean:**

- (1) an assessment of the Demised Premises performed by an independent and duly qualified, licensed**

**engineer with experience and expertise in conducting environmental assessments of real estate, bedrock and groundwater of the type found on the Demised Premises, and said assessment shall include, but not necessarily be limited to a historical review of the use (abuse) of the Demised Premises, a review of the utilization and maintenance of Hazardous Materials on the Demised Premises, review of the Demised Premises' permit and enforcement history (by review of regulatory agency records), a site reconnaissance and physical survey, inspection of Demised Premises, site interviews and site history evaluations, basic engineering analyses of the risks to human health and the environment of any areas of identified concerns, and preparation of a written report which discusses history, site land use, apparent regulatory compliance or lack thereof and which includes historical summary, proximity to and location of USTs, LUSTs, TSDFs, CERCLA site flood plain, maps, photograph log, references, conclusions and recommendations.**

**D. "Phase II Environmental Assessment" shall mean:**

- (1) an assessment of the Demised Premises performed by an independent and duly qualified, licensed engineer with experience and expertise in conducting environmental assessments of real estate, bedrock and groundwater of the type found on the Demised Premises, and said assessment shall include, but not necessarily be limited to, extensive sampling of soils, groundwaters and structures, followed by laboratory analysis of these samples and interpretation of the results, and preparation of a written report with boring logs, photograph logs, maps, investigative procedures, results, conclusions and recommendations.**

**10.02 MANUFACTURE, USE, STORAGE, TRANSFER OR DISTRIBUTION OF HAZARDOUS MATERIALS UPON OR WITHIN THE DEMISED PREMISES**

**Lessee, for itself, its heirs, executors, administrators, successors and assigns, covenants that to the extent that any Hazardous Materials are manufactured, brought upon, placed, stored, transferred or distributed upon or within the Demised Premises by Lessee, or its subtenant or assigns, or any of their agents, servants, employees,**

**contractors or subcontractors, same shall be done in strict compliance with all Environmental Laws.**

**Construction or installation of new or reconstruction of existing underground storage tanks and underground interconnecting conveyance facilities for any material or substance is not permitted without the advance written consent of the Executive Director of the District.**

#### **10.03 USE OF DEMISED PREMISES (RESTRICTIONS - ENVIRONMENTAL)**

**Lessee shall use the Demised Premises only for purposes expressly authorized by Article 3.07 of this Lease. Lessee will not do or permit any act that may impair the value of the Demised Premises or any part thereof or that could materially increase the dangers, or pose an unreasonable risk of harm, to the health or safety of persons to third parties (on or off the Demised Premises) arising from activities thereon, or that could cause or threaten to cause a public or private nuisance on the Demised Premises or use the Demised Premises in any manner (i) which could cause the Demised Premises to become a hazardous waste treatment, storage, or disposal facility within the meaning of, or otherwise bring the Demised Premises within the ambit of, the Resource Conservation and Recovery Act of 1976, Section 6901 et seq. of Title 42 of the United States Code, or any similar state law or local ordinance, (ii) so as to cause a release or threat of release of Hazardous Materials from the Demised Premises within the meaning of, or otherwise bring the Demised Premises within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 9601 et seq. of Title 42 of the United States Code, or any similar state law or local ordinance or any other Environmental Law or (iii) so as to cause a discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions, which would require a permit under the Federal Water Pollution Control Act, Section 1251 of Title 33 of the United States Code, or the Clean Air Act, Section 741 of Title 42 of the United States Code, or any similar state law or local ordinance.**

#### **10.04 CONDITION OF PROPERTY (ENVIRONMENTAL)**

- (1) In the event Lessee has been the prior occupant/tenant of the Demised Premises under a prior occupancy/use authorization, Lessee warrants and represents that the Demised Premises and improvements thereon, including all personal property, are free from contamination by any Hazardous Materials, that there has not been thereon a release, discharge, or emission, of any Hazardous Materials during its occupancy of the Demised Premises as defined by any Environmental Laws, and that the Demised Premises does not contain, or is not affected by underground storage tanks, landfills, land disposal sites, or dumps. \*(This**

**provision is applicable only to tenants seeking a new lease for the same property).**

- (2) In the event of a release, emission, discharge, or disposal of Hazardous Materials in, on, under, or about the Demised Premises or the improvements thereon, it shall be the sole responsibility of Lessee to take all appropriate response action, including any removal and remedial action, after the execution date of this Lease.**

#### **10.05 INDEMNIFICATION (ENVIRONMENTAL)**

- A. In consideration of the execution and delivery of this Lease Agreement, Lessee indemnifies, exonerates, and holds Lessor and its officers, officials, Commissioners, employees, and agents ("Indemnified Parties") free and harmless from and against any and all actions, causes of action, suits, losses, costs, liabilities and damages and expenses incurred in connection with any of these (irrespective of whether any such Indemnified Party is a party to the action for which indemnification is here sought), including reasonable attorney's fees, costs and disbursements, incurred by the Indemnified Parties as a result of or arising out of or relating to (i) the imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of Lessee's activities on the Demised Premises, or (ii) any investigation, litigation, or proceeding related to any environmental response, audit, compliance, or other matter relating to the protection of the environment by reason of Lessee's activities on the Demised Premises, or (iii) the release or threatened release by Lessee, its subsidiaries, or its parent company, of any Hazardous Materials, or the presence of Hazardous Materials on or under the Demised Premises, or any property to which Lessee, its parent company or any of its subsidiaries has sent Hazardous Materials, (including any losses, liabilities, damages, injuries, costs, expenses, or claims asserted or arising under any Environmental Law), regardless of whether caused by or within the control of Lessee, its parent company or its subsidiaries, provided that, to the extent Lessor is strictly liable under any Environmental Laws, Lessee's obligation to Lessor under this indemnity shall be without regard to fault on the part of Lessee with respect to the violation of law which results in liability to Lessor.**
- B. Lessee shall defend, indemnify, save and keep harmless the Indemnified Parties against any loss, damage, cost, lien or expense which they may suffer, incur or sustain or for which it**