CITY COUNCIL
ATLANTA, GEORGIA

RESOLUTION BY COMMUNITY DEVELOPMENT/ HUMAN RESOURCES COMMITTEE

03-R-2167

December 1, 2003

AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT WITH CABBAGETOWN INITIATIVE COMMUNITY DEVELOPMENT CORPORATION, INC., FOR THE PURPOSE OF LEASING A CITY OF ATLANTA BUILDING LOCATED AT 177 ESTORIA STREET, ATLANTA, GEORGIA 30316, LOCATED IN A PARK WITHIN CABBAGETOWN FOR A TEN (10) YEAR PERIOD, ON BEHALF OF THE DEPARTMENT OF PARKS, RECREATION AND CULTURAL AFFAIRS; AND FOR OTHER PURPOSES.

Whereas, the Cabbagetown Initiative is a non-profit corporation whose mission is to enhance the quality of life in the Cabbagetown community by empowering neighbors to act collectively for community development and the initial focus of the Cabbagetown Initiative is to create a Park with a Community Center in the Cabbagetown neighborhood; and

Whereas, the City of Atlanta, Department of Parks, Recreation and Cultural Affairs desires to assist the Cabbagetown Initiative with its mission; and

Whereas, the City of Atlanta, Department of Parks, Recreation and Cultural Affairs owns two (2) adjoining parcels of property which are located in the Cabbagetown area that shall be utilized as one park located at 701 Kirkwood Avenue, Atlanta, Georgia 30316, commonly known as the Grant School Property and 177 Estoria Street, Atlanta, Georgia, 30316, commonly known as Sheltering Arms; and

Whereas, the City of Atlanta, Department of Parks, Recreation and Cultural Affairs have previously entered into a Memorandum of Understanding with the Cabbagetown Initiative organization with regards to the Park that lays the foundation for these entities to work cooperatively to develop, manage and enhance the Park; and

Whereas, a building is located on that portion of the Park located at 177 Estoria Street, Atlanta, Georgia 30316, and the Cabbagetown Initiative desires to lease that building from the City of Atlanta, Department of Parks, Recreation and Cultural Affairs and utilize it as a Neighborhood Community Center, and the City of Atlanta, Department of Parks, Recreation and Cultural Affairs, Acting Commissioner wishes to lease the building to the Cabbagetown Initiative organization for that stated purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

Section 1: That the Mayor be and is hereby authorized to enter into a Lease Agreement with the Cabbagetown Initiative Community Development Corporation, Inc., a non-profit corporation for the purpose of leasing a building which is located on a portion of the Park

at 177 Estoria Street, Atlanta, Georgia, 30316, so as to utilize the building as a Neighborhood Community Center for a term of ten (10) years.

Section 2: That the Cabbagetown Initiative Community Development Corporation shall not owe monthly rent to the City. In exchange for a waiver of this monthly rent, the Cabbagetown Initiative organization shall design and renovate the Leased building, and shall create, construct, manage and operate a Neighborhood Community Center in a manner that is consistent with the City of Atlanta, approved Park Master Plan, and shall pay all charges for all utility services.

Section 3: That the City Attorney shall prepare the appropriate Lease Agreement for execution by the Mayor, to be approved as to form by the City Attorney.

Section 4: That said Lease Agreement shall not become binding on the City, and the City shall incur no liability upon same until the Lease Agreement has been executed by the Mayor and delivered to the leasing party.

A true copy

Deputy Clerk

ADOPTED by the City Council December 1, 2003
APPROVED by the Mayor December 9, 2003

City of Atlanta
Department of Parks, Recreation and Cultural Affairs

LEASE AGREEMENT
with
CABBAGETOWN INITIATIVE
COMMUNITY DEVELOPMENT CORPORATION, INC.
For
Cabbagetown Community Center

GEORGIA . . . . . FULTON COUNTY

THIS LEASE AGREEMENT is made and entered into as of the _____ day of _____, 2003, by and between the CITY OF ATLANTA, a municipal corporation of the State of Georgia (hereinafter referred to as the "City"), and the CABBAGETOWN INITIATIVE COMMUNITY DEVELOPMENT CORPORATION, INC., a non-profit corporation (hereinafter referred to as the "Cabbagetown Initiative").

WITNESSETH THAT:

WHEREAS, The Cabbagetown Initiative is a non-profit corporation whose mission is to enhance the quality of life in the Cabbagetown community by empowering neighbors to act collectively for community development. The initial focus of the Cabbagetown Initiatve is to create a park with a community center in the Cabbagetown neighborhood; and

WHEREAS, the City desires to assist the Cabbagetown Initiative with its mission. Accordingly, the City owns two adjoining parcels of property located in Cabbagetown that shall be utilized as one park ("the Park"): 1) 701 Kirkwood Avenue, Atlanta, Georgia 30316, commonly known as the Grant School Property; and 2) 177 Estoria Street, Atlanta, Georgia 30316, commonly known as Sheltering Arms. The City and the Cabbagetown Initiative (hereinafter referred to collectively as "the Parties") have previously entered into a Memorandum of Understanding regarding the Park, which lays the foundation for the Parties to work cooperatively to develop, manage and enhance the Park; and

WHEREAS, a building is located on that portion of the Park located at 177 Estoria Street, and the Cabbagetown Initiative desires to lease that building from the City and utilize it as a neighborhood community center. The City wishes to lease the building to the Cabbagetown Initiative for that purpose; and

WHEREAS, the execution of this Lease on the part of the City has been authorized by resolution (No. 03-R-----) of the Council of the City of Atlanta adopted on -----, 2003, and approved on ------, 2003, in the form and manner of that copy attached hereto as Appendix I and made a part hereof by reference.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL TERMS AND CONDITIONS hereinbelow set forth, the Parties hereto do hereby agree as follows:

1. Leased Premises

The City leases to the Cabbagetown Initiative and the Cabbagetown Initiative leases from the City the building located at 177 Estoria Street, Atlanta Georgia, including all of the improvements and equipment existing therein (is there any), comprising approximately _____ square feet of exclusively leased space, and hereinafter referred to as "Premises" or "Leased Premises."

2. Use of Premises

2.01 Permitted Uses

The Premises shall be used for operation of a neighborhood community center and for no other use without prior written consent from the Commissioner of the Department of Parks, Recreation and Cultural Affairs (hereinafter referred to as "the Commissioner"). Any revenue not authorized herein received by the Cabbagetown Initiative or any Sublessese or other user of the Leased Premises, arising out of its use of the Leased Premises, shall inure immediately and completely to the City.

2.02 Restrictions on Use of Premises

2.02.1 The Cabbagetown Initiative shall not do, or cause or permit anything to be done, in or about the Premises, or bring or keep anything thereon which will increase in any way the rate of fire insurance; or create a nuisance; or in any way obstruct or interfere with the rights of others residing or operating businesses near the Leased Premises, or injure or annoy them; or allow any sale by auction on the Premises; or commit or suffer to be committed any waste upon the Premises; or use or allow the Premises to be used for any improper, immoral, unlawful, or objectionable purpose; or place any loads upon the floor, walls, or ceiling which will endanger the structure; or do or permit to be done anything in any way tending to injure the reputation of the City or the appearance of the Park.

2.02.2 Lessee shall not vacate nor abandon the Leased Premises at any time during the term hereof; and, if the Lessee shall abandon, vacate, or surrender the Leased Premises or be dispossessed by operation of law or otherwise, any personal property belonging to Lessee and left upon the Leased Premises and any or all of Lessee's improvements and facilities thereon shall, at the option of

the City, be deemed to be abandoned by Lessee and shall, at the option of the City, become the property of the City.

3. Term

The Term of this Lease Agreement shall commence on the date that this Lease Agreement is executed and shall continue for ten years.

3.01 Inspection of the Premises Prior to Expiration of the Term

A walk through inspection of the premises shall be made by the Commissioner or her designee and a representative of the Cabbagetown Initiative prior to the expiration of the Term hereof, for the purpose of noting deficiencies in the maintenance of the Leased Premises. The Cabbagetown Initiative shall correct or repair any and all deficiencies noted during such inspection.

3.02 Special Right of Termination

Either of the Parties shall have the right to terminate this Lease without cause at any time during the Term or any extension thereof by giving written notice to the other Party at least 60 days prior to the date such termination is to be effective. Should the City terminate the Lease pursuant to this section 3.02, the City agrees to reimburse the Cabbagetown Initiative for the reasonable and proper unamortized capital costs of the Leasehold Improvements as documented by the Cabbagetown Initiative pursuant to Section 7 below, and amortized based upon a straight-line depreciation schedule over the Term of this Lease, with zero salvage value.

3.03 Surrender of Premises

The Cabbagetown Initiative shall yield and deliver peaceably to the City possession of the Premises and, to the extent required hereunder, the Cabbagetown Initiative's Improvements, at the end of the Lease Term, whether such end occurs by termination, expiration, or otherwise. The Premises shall be in a condition similar to that which existed at the beginning of the Lease Term, except for reasonable wear and tear arising from use of the Premises to the extent permitted elsewhere in this Lease. Except as may be otherwise required by this Lease, the Cabbagetown Initiative shall remove its signs and trade fixtures from the Premises and shall surrender the Premises and appurtenances thereto in clean and neat condition. All keys to the Premises shall be delivered to the Commissioner by the Cabbagetown Initiative. The Commissioner shall determine that the Premises are clean, neat, and in good repair as provided in this Section. The Cabbagetown Initiative can take trade fixtures,

furniture and personal property, provided that the same are removed within thirty days.

4. Rental

The Cabbagetown Initiative shall not owe monthly rent to the City. In exchange for a waiver of monthly rent, the Cabbagetown Initiative shall design and renovate the Leased Premises, and shall create, construct, manage and operate a neighborhood community center therein in a manner that is consistent with the City-approved Park Master Plan.

5. Utilities

The Cabbagetown Initiative shall maintain, repair and replace all utilities serving the Premises and pay all charges for utility services to the Premises promptly when due. The Cabbagetown Initiative hereby expressly waives and releases the City from any and all claims for damages arising or resulting from failures or interruptions of utility services to the Premises, provided that such failures or interruptions were not occasioned by the City's fault or neglect.

6. Maintenance of Premises

The Cabbagetown Initiative shall be responsible for all repairs and maintenance of the Premises throughout the Term. The Cabbagetown Initiative shall keep and maintain the Premises and all improvements, equipment and fixtures existing thereon in good and sanitary order and repair and in good, safe, and presentable condition, consistent with the highest forms of business practices, all at no cost or expense to the City. If after thirty (30) days written notice from the City, the Cabbagetown Initiative fails to maintain or repair the Leased Premises, then the City may, but shall not be obligated to, enter upon the Leased Premises and perform such maintenance or repair, and the Cabbagetown Initiative shall pay the cost thereof to the City upon demand; provided, however, that if such repairs cannot be completed within said thirty-day period, then the Cabbagetown Initiative shall not be in default and the City may not exercise its option herein if the Cabbagetown Initiative has commenced repairs within said thirty-day period and diligently pursues same to completion. Any unpaid amounts under this Section 6 shall bear interest at the rate of 10% per annum until paid in full.

7. Improvements

The Cabbagetown Initiative hereby accepts the Leased Premises in their "as-is" condition and shall construct or install all improvements or equipment in the Premises required for the uses and purposes contemplated herein without any cost or expense to the City, subject to prior written approval by the Commissioner of the plans and specifications therefor.

7.01 Contractors Hired

The Cabbagetown Initiative shall hire contractors who are acceptable to City. All contractors shall be required to provide the City with certificates of general liability and other insurance coverage in such amounts as City may reasonably require, and with endorsements described in Section 13 hereinbelow. The Cabbagetown Initiative shall obtain and pay all fees for all permits required by the City or other legal jurisdictions, as applicable, for all improvements to the Premises, and shall furnish copies of such permits to the Commissioner prior to commencement of work.

7.02 Documentation of Improvements

The Cabbagetown Initiative shall furnish a set of As-Built Drawings to the Commissioner for all Cabbagetown Initiative Improvements. Further, the Cabbagetown Initiative shall document the costs of the the Cabbagetown Initiative Improvements in a form and detail satisfactory to the Commissioner and submit same within 30 calendar days following completion of the work for review and approval, for the purpose of establishing the unamortized costs of Leasehold Improvements to be reimbursed to the Cabbagetown Initiative pursuant to Sections 3.02 and 16.2 herein.

7.03 Removal and Demolition

The Cabbagetown Initiative shall not remove or demolish, in whole or in part, any Improvements upon the Leased Premises without the prior written consent of the Commissioner, who may, in her/his discretion, condition such consent upon the obligation of the Cabbagetown Initiative to replace the same by an improvement specified in such consent, but the Commissioner shall not withhold consent unreasonably and shall not impose unreasonable conditions on the consent.

7.04 Title

Title to any and all improvements made by the Cabbagetown Initiative to or upon the Leased Premises shall pass to and be vested in the City upon completion of each improvement.

8. Trash and Refuse

8.01 Removal and Disposal

It is hereby expressly stipulated that the quick and efficient removal and disposal of trash, clippings, refuse, garbage, and other debris from the Leased Premises is essential, and the Cabbagetown Initiative shall arrange for such

removal and disposal of same at its cost and at no cost or expense to the City and in accordance with applicable laws and ordinances.

8.02 Storage Containers

Trash, clippings, refuse, garbage, and other debris shall be stored in closed containers suitably screened, pending their removal and disposal, and the Cabbagetown Initiative shall make certain that such storage does not generate odors, attract rodents or insects, or become offensive in any manner.

8.03 Deleterious Wastes

The Cabbagetown Initiative shall obey any and all applicable laws, procedures, standards, and regulations of Federal, State, County, and City authorities regarding petroleum products and other deleterious wastes, including but not limited to regulations regarding entrance of those products into the sewage and storm water drainage systems and the required treatment of those products. In the event that the Cabbagetown Initiative violates this provision, and/or the City is required by any Federal or State agency having jurisdiction in such matters, to pay a fine, penalty, or incur other costs, due to the failure of the Cabbagetown Initiative to comply with this Subsection, then in such event, the Cabbagetown Initiative shall reimburse the City the full amount of such fine, penalty, and/or costs promptly upon receipt of invoice therefor from the City, and in addition, the provisions set forth in the first paragraph of section 10.03 (Hazardous Substances Section) below, regarding the Cabbagetown Initiative's obligations to the City, shall apply. For purposes of this subsection 8.03, deleterious waste shall not include materials which are deemed hazardous materials, as set forth in section 10.03 below.

9. Encumbrances and Liens

The Cabbagetown Initiative shall not encumber the Cabbagetown Initiative's interest in the Leased Premises or in any improvements that it places thereon by mortgage, deed or trust, or other instrument without prior written consent of the City. With the exception of said encumbrances which have been consented to by the City, the Cabbagetown Initiative shall keep the Leased Premises and all improvements thereon free from any and all liens arising out of any work performed, materials furnished or obligations incurred by the Cabbagetown Initiative, the Cabbagetown Initiative's employees, agents, sublessees, contractors and/or subcontractors. The Cabbagetown Initiative shall save the City harmless from any such liens (including any encumbrance which did not receive prior written consent of the City) and shall pay to the City, upon demand, the cost of discharging such liens with interest at the rate of seven (7%) percent per annum from the date of such discharge, together with reasonable attorney's fees in connection with the settlement, trial, or appeal of any such lien matter. It is understood, however, that the Cabbagetown Initiative may pay any such liens under protest; and without liability, cost or expense to the City, may, in good faith, contest the validity or amount thereof.

10. Compliance with Laws and Regulations

10.01 General Compliance

The Cabbagetown Initiative shall not omit or fail to do anything, or do or permit anything to be done on or about the Leased Premises, or bring or keep anything on the Leased Premises on in any improvement erected thereon, which will in any way conflict with any law, ordinance, rule or regulation required to be kept and observed by the Cabbagetown Initiative which is now in force or which may hereinafter be enacted or promulgated by any public authority having jurisdiction over the Leased Premises.

10.02 Drug-Free Workplace Policy

The Cabbagetown Initiative acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City property and thus on the Premises. Violation of this provision of this Lease shall result in immediate termination of the Lease by the City.

10.03 Hazardous Materials

Except in compliance with all applicable requirements, the Cabbagetown Initiative shall not allow the entrance of Hazardous Materials, as defined below, from the Leased Premises into the sewage and stormwater drainage system serving the Premises and/or the Park. The Cabbagetown Initiative shall not cause or permit any Hazardous Materials to be placed, held, stored, processed, treated, released or disposed of on or at the Leased Premises. The Cabbagetown Initiative hereby indemnifies the City from and against any breach by the Cabbagetown Initiative of the obligations stated in the preceding sentences, and agrees to defend and hold the City harmless from and against any and all loss, damage, cost and/or expenses (including, without limitation, fines assessed against the Cabbagetown Initiative, the City or others for whom the City may be responsible, diminution in value of the Premises, and sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees) which arise during or after the Term as a result of such breach. This indemnification of the City by the Cabbagetown Initiative also includes, without limitation, costs incurred in connection with any investigation of the site conditions or any cleanup, remedial, removal, or restoration work required by any Federal, State or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Premises or in the Park which results from such a breach. Without limiting the foregoing, if the presence of any Hazardous Material on Premises caused or permitted by the Cabbagetown Initiative results in any contamination of the Premises or the Park, the Cabbagetown Initiative shall promptly take all actions at its sole expense as are necessary to

return the Premises and the Park to the condition existing prior to the introduction of such Hazardous Material to the Premises; provided that the City's approval of such actions, and the contractors to be used by the Cabbagetown Initiative in connection therewith, shall first be obtained.

As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any governmental authority having jurisdiction over the Premises, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (a) defined as a "hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" or similar term under any laws now or hereafter enacted by the United States or the State of Georgia or any political subdivision thereof, or (b) designated as a "hazardous substance" pursuant to Section 311 of the Federal water Pollution Control Act (33 U.S.C. § 1317), or (c) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6911 *et seq.* (42 U.S.C. § 903), or (d) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* (42 U.S.C. § 9601).

11. Non-Discrimination

11.01 Certification of Non-Discrimination Covenant

By execution of this Lease Agreement, the Cabbagetown Initiative certifies that, during the Term of this Lease, it shall be bound by and comply with the following statement:

> "We the supplier of goods, materials, equipment or services covered by this Lease or contract shall not discriminate against any volunteer, employee, or applicant for volunteerism or employment, because of the race, creed, color, religion, sex, national origin, marital status, parental status, age, physical handicap, sexual orientation, or gender identity of such person."

As used here, the words 'shall not discriminate' shall mean and include without limitation the following:

Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

11.02 Mandatory Contractor, Subcontractor and Sublessee Compliance

The Cabbagetown Initiative shall incorporate a copy of the Nondiscrimination Covenant, section 11.01 above, in each and every contract with each and every Contractor, Subcontractor and/or Sub-lessee of any tier, and shall require each and every Contractor, Subcontractor and/or Sub-lessee of any tier, to comply with all such requirements.

12. Transfer of Title or Rights

12.01 Limitations on Assignment, Transfer

The Cabbagetown Initiative shall not sell, assign, or transfer this Lease Agreement without the prior written consent of the City. Section 19.2 of this Lease Agreement, regarding unreasonable withholding of consent, shall not apply to 12.01. The City shall have the right to charge a rental rate up to fair market value at the time of any sale, assignment or transfer. No assignee for the benefit of the Cabbagetown Initiative 's creditors, and no trustee, receiver or referee in bankruptcy shall acquire any rights under this Lease Agreement by virtue of this paragraph.

12.02 Subletting

The Cabbagetown Initiative shall not sublease the Leased Premises, or any portion thereof or any privilege granted with respect to the operation of said premises or any portion thereof, without the prior written consent of the Commissioner. The Cabbagetown Initiative shall retain any income from subletting and shall utilize said income solely for the maintenance and operation of the Leased Premises and/or the Park.

13. Liability, Indemnity, and Insurance

13.1 City's Liabilities

The City shall not in any way be liable or responsible for any loss or damage or expense that the Cabbagetown Initiative may sustain or incur in its occupancy and use of the Leased Premises hereunder.

13.2 Indemnification and Hold Harmless

(a) Releases and Indemnification:

The Cabbagetown Initiative hereby releases and shall indemnify, defend, and hold harmless the City, its elected officials, officers, agents, employees, authorized representatives, successors, and assigns from and against any and all suits, actions, legal or administrative proceedings, claims, debts, demands, damages, liabilities, injuries, obligations, losses, judgments, charges, interest, attorneys' fees, costs, causes of action of every kind and character, whether

in law or equity, and expenses of every kind or nature, whether arising before or after the termination of this Lease Agreement and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault or negligence whether active or passive of the Cabbagetown Initiative, its officers, employees, agents, subcontractors or of anyone acting under its direction or control or on its behalf in connection with or incidental to this Lease Agreement.

(b) Negligence and Waiver

The Cabbagetown Initiative's aforesaid release, indemnity, and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, or strict liability of the parties released, indemnified or held harmless to the fullest extent permitted by law, but in no event shall they apply to liability caused by the willful misconduct or sole negligence of the party released, indemnified, or held harmless. The Cabbagetown Initiative specifically waives any immunity provided against this indemnity by an industrial insurance or workers' compensation statute. The Cabbagetown Initiative further agrees that this agreement to indemnify, defend, and hold harmless the parties released shall not be limited to the limits or terms of the insurance, if any, required under this Lease Agreement. This Section 8.2 shall survive any termination or expiration of this Lease Agreement.

13.3 Insurance and Bonding Requirements **(MUST CONFIRM THIS § W/ TARIK- Do we need builder's risk insurance, bonding, etc.)**

13.3.1 General Preamble

The following general requirements apply to the Cabbagetown Initiative, but where appropriate may be satisfied by the Cabbagetown Initiative's contractors and sub-contractors who perform work directly or indirectly for The Cabbagetown Initiative in the Premises. Compliance is required by all sub-lessees of any tier. Insurance and bonding requirements are based on information received as of the date of this Lease Agreement. City reserves the right to adjust or waive any or all requirements based on receipt of additional information pertinent to this Lease Agreement.

13.3.2 Evidence of Insurance Required Before Work Begins

The Cabbagetown Initiative or sub-lessee shall not allow its contractors or sub-contractors to commence any work of any kind pursuant to this Lease until all Insurance and Bond requirements contained in this Lease Agreement shall have been complied with, and until evidence of such compliance satisfactory to the City as to form and content has been filed with the City. The Accord Certificate of Insurance or a pre-approved

substitute is the required form in all cases where reference is made to a Certificate of Insurance or an approved substitute.

13.3.3 Minimum Financial Security Requirements for Insurers

Any and all companies providing insurance required pursuant to this Lease Agreement must meet the minimum financial security requirements set forth below. These requirements conform to the ratings published by A.M. Best & Company in the current Best's Key Rating Guide - Property - Casualty. The ratings for each company must be indicated on the Accord Certificate of Insurance form. For all contracts, regardless of size, companies providing Insurance or Bonds under this Lease must have a current:

i. Best's Rating not less than A-; and current;
ii. Best's Financial Size Category not less than Class IX;
iii. Authorization issued by the Insurance Commissioner, State of Georgia, to conduct and transact insurance contracts; and,

furthermore, all bid, performance and payment bonds must be issued by a U. S. Treasury Circular 570 listed company. If the issuing company does not meet these minimum requirements, or for any other reason shall be or become unsatisfactory to the City, written notification shall be mailed by City to the Cabbagetown Initiative, who shall promptly itself, or require its contractor to, obtain a new policy or bond issued by an insurer acceptable to City, and shall submit evidence of the same to City as required herein.

Upon failure of the Cabbagetown Initiative to furnish, deliver, and maintain such insurance or bonds as herein provided, this Lease Agreement, at the election of City, may be declared forthwith suspended, discontinued, or terminated. Failure of the Cabbagetown Initiative to take out and/or to maintain any required insurance or bonds shall not relieve the Cabbagetown Initiative from any liability under this Lease Agreement, nor shall these requirements be construed to conflict with the obligation of this Lease concerning indemnification.

13.3.4 Insurance Required for Duration of Lease Agreement

Any and all insurance and bonds required pursuant to this Lease Agreement shall be maintained during the entire Term of this Lease Agreement, including any extensions thereto, and until all work has been completed to the satisfaction of City. City shall have the right to inquire into the adequacy of the insurance coverages set forth in this Lease Agreement and to negotiate such adjustments as reasonably appear necessary.

13.3.5 Mandatory 30-day Notice of Cancellation or Material Change

City shall, without exception, be given no fewer than 30 days notice prior to cancellation for other than non-payment of premiums or for material change of any insurance or bond required by this Lease Agreement. Non-payment of premiums shall require 10 days prior notice of cancellation. Confirmation of this mandatory 30 days notice of cancellation shall appear on the Accord Certificate of Insurance and on any and all Bonds and Insurance policies required by this Lease Agreement.

13.3.6 City as Additional Insured

City shall be covered as Additional Insured under any and all Insurance and Bonds required pursuant to this Lease Agreement, and such insurance shall be primary with respect to the Additional Insured. Confirmation of this shall appear on the Accord Certificate of Insurance and on any and all applicable Bonds and Insurance policies. However, this requirement does not apply to Workers' Compensation, or Payment and Performance Bonds.

13.3.7 Mandatory Contractor, Subcontractor, and Sublessee Compliance

The Cabbagetown Initiative shall incorporate a copy of these Insurance, Bond, and Indemnification and Hold Harmless requirements in each and every contract with each and every Contractor, Subcontractor and/or Sub-lessee of any tier, and shall require each and every Contractor, Subcontractor and/or Sub-lessee of any tier to comply with all such requirements. The Cabbagetown Initiative agrees that if for any reason any Sub-lessee fails to procure and maintain Insurance and Bonds as required, all such required Insurance and Bonds shall be procured and maintained by the Cabbagetown Initiative at the Cabbagetown Initiative's expense.

13.3.8 Authorization and Licensing of Agent

Each and every agent acting as Authorized Representative on behalf of a company affording coverage pursuant to this Lease shall warrant when signing the Accord Certificate of Insurance that specific authorization has been granted by the company for the agent to bind coverage as required and to execute the Accord Certificate of Insurance as evidence of such coverage. The agent shall also warrant that where City's coverage requirements may be broader than the original policies, these requirements have been conveyed to the company for these terms and conditions. In addition, each every agent shall warrant when signing the Accord Certificate of Insurance that the agent is licensed to do business in the

State of Georgia and that the company or companies are currently in good standing in the State of Georgia.

13.4 Workers' Compensation and Employer's Liability Insurance

The Cabbagetown Initiative shall procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits, such insurance to cover each and every employee who is or may be engaged in work under this Lease:

Workers' Compensation . . . . . Statutory

Employer's Liability
Bodily Injury by Accident/Disease $100,000 each accident
Bodily Injury by Accident/Disease $100,000 each employee
Bodily Injury by Accident/Disease $500,000 policy limit

13.5 General Liability Insurance

The Cabbagetown Initiative shall procure and maintain General Liability Insurance in an amount not less than $1,000,000 Bodily Injury and Property Damage combined single limit. The following specific extensions of coverage shall be provided and shall be indicated on the Accord Certificate of Insurance:

(1) Comprehensive Form
(2) Contractual Insurance – (Blanket or specific applicable to this Lease)
(3) Personal Injury
(4) Broad Form Property Damage
(5) Premises – Operations

13.6 Automobile Liability Insurance

The Cabbagetown Initiative shall procure and maintain Automobile Liability Insurance with not less than $500,000 Bodily Injury and Property Damage combined single limit. The following extensions of coverage shall be provided and shall be indicated on the Certificate of Insurance:

(1) Comprehensive Form
(2) Owned, Hired, Leased and Non-owned vehicles to be covered.

In the event the Cabbagetown Initiative does not own any automobiles in the corporate name, non-owned vehicle coverage shall apply and must be endorsed on either the Cabbagetown Initiative's personal automobile policy or the Comprehensive General Liability coverage required under this Lease.

13.7 Property Insurance

The Cabbagetown Initiative shall procure and maintain Property Insurance covering all forms of risk on the Premises(is this the City's responsibility or also CI's?), on all The Cabbagetown Initiative's improvements to the Premises and any other interests of the Cabbagetown Initiative, if applicable, in or about the Premises, including inventory, supplies, and other property of the Cabbagetown Initiative located in the Premises, insuring against the perils of fire, lightning, extended coverage, vandalism, malicious mischief, glass breakage, and sprinkler leakage, in an amount equal to the fair market value of the Premises (?), and the full replacement value of the Cabbagetown Initiative's improvements and any other interests of the Cabbagetown Initiative in or about the Premises. (Tarik, are the highlighted items our responsibility or the lessee's?)

14. Property Insurance; Damage or Destruction of the Premises

14.1 Repair and Rebuilding

Each of the Parties hereto shall insure its respective interest in the Premises. In this regard, the Cabbagetown Initiative shall comply with the provisions of Section 13 above. In the event of damage to or destruction of the Premises by fire or other casualty or otherwise, the parties shall repair or rebuild the Premises to the extent of their respective interests with all reasonable diligence and dispatch so as to restore it, as nearly as possible, to the condition which existed immediately prior to the damage or destruction, subject to such modifications as may be agreed upon between the Cabbagetown Initiative and the City, and further subject to the provisions of Section 14.2 below.

14.2 Option of City Not to Repair or Rebuild

If the entire Premises is so substantially damaged or destroyed that the City determines that rebuilding is not prudent, it may elect within 60 days of the date of the damage or destruction not to rebuild and within such period so notify the Cabbagetown Initiative. In such event, the insurance proceeds paid on claims filed by City relative to losses sustained by City under insurance policies obtained by City shall be payable to City, insurance proceeds paid on claims filed by the Cabbagetown Initiative relative to losses sustained by the Cabbagetown Initiative under insurance policies obtained by the Cabbagetown Initiative shall be payable to the Cabbagetown Initiative, and all other claims shall be paid as the interests of the parties may appear, and this Lease shall be terminated.

14.3 Failure of City to Repair or Rebuild

If the damage or destruction is so extensive that the Premises cannot reasonably be used by the Cabbagetown Initiative to conduct its business and City fails to proceed within 60 days with repair and rebuilding as required herein and to

diligently proceed thereafter to pursue such repair and rebuilding as required herein to completion, the Cabbagetown Initiative may terminate this Lease for default.

15. DEFAULT BY THE CABBAGETOWN INITIATIVE

15.1 Events of Default

The Cabbagetown Initiative shall be in default under this Lease if:

15.1.1 Failure to Abide by Lease Terms

The Cabbagetown Initiative shall fail to keep, perform, or observe any other term, covenant, or condition of this Lease to be kept, performed, or observed by the Cabbagetown Initiative and shall not cure such failure within thirty (30) days after receipt of written notice of such failure from the Commissioner or, if such failure cannot be cured within said thirty (30) day period, the Cabbagetown Initiative fails to commence such cure within that period and thereafter to diligently pursue same to completion. The thirty (30) day cure period shall not apply to violations set forth in section 10.02 above nor in sections 15.1.2 nor 15.13 below.

15.1.2 Abandonment of Premises or Cessation of Services

The Cabbagetown Initiative abandons the Premises or ceases providing its services therein for thirty (30) days or more, except when such abandonment and cessation is due to fire, earthquake, strike, governmental action, default by City, or any other cause beyond the control of the Cabbagetown Initiative.

15.1.3 Misrepresentation

The Cabbagetown Initiative intentionally and willfully misrepresents to City any material fact regarding its ability to enter into this Lease.

15.2 City's Remedies

If default is made by the Cabbagetown Initiative, as described in section 13.1 above, the City may terminate this Lease upon written notice to the Cabbagetown Initiative.

15.2.1 Possession

Without any showing of need or the presence of any statutory or common law grounds, all of which requirements are hereby expressly waived by the Cabbagetown Initiative, upon termination of this Lease by the City due to

the Cabbagetown Initiative's default, the City may take possession of the Premises exclusive of, trade fixtures, inventory, and personal property, and relet all or any portion thereof.

15.2.2 Other Remedies

The City may exercise any and all other rights or remedies available at law or in equity, including, without limitation, the right to obtain restraining orders, injunctions, and decrees of specific performance.

16. **Default by the City**

16.1 Events of Default

The City shall be in default under this Lease if:

16.1.1 Premises not Available to the Cabbagetown Initiative

The City shall deprive the Cabbagetown Initiative of its right to occupy and use the Premises in accordance with the terms of this Lease for a period in excess of five (5) calendar days.

16.1.2 Failure to Abide by Lease Terms

The City shall fail, after receipt of thirty (30) days prior written notice from the Cabbagetown Initiative, to keep, perform, or observe any other term, covenant, or condition of this Lease to be kept, performed, or observed by the City.

16.2 The Cabbagetown Initiative's Remedies

If default is made by the City as described in section 16.1 above, the Cabbagetown Initiative may terminate this Lease upon written notice to City. The Cabbagetown Initiative may charge the City for the reasonable and proper unamortized capital costs of the Leasehold Improvements as documented by the Cabbagetown Initiative pursuant to Section 7 above, and amortized based upon a straight-line depreciation schedule over the Term of this Lease, with zero salvage value.

17. City Inspection of Premises

The City shall have the right, upon prior notice to the Cabbagetown Initiative, and at any reasonable time, to inspect the Leased Premises for the purpose of determining whether or not the Cabbagetown Initiative is complying with the terms and conditions hereof or for any other purpose incidental to the rights of the City. In the event of an emergency, the City shall have the absolute right to take such action therein as may be required for the protection of persons or property. The

Cabbagetown Initiative shall assure the City of emergency access to the Premises by providing emergency telephone numbers at which the Cabbagetown Initiative or its agent may be reached on a 24-hour basis. For non-emergencies, the City's employee or representative shall be escorted by an authorized Cabbagetown Initiative employee.

18. Waivers

No waiver by either party at any time of any of the terms, conditions, or covenants of this Lease, or noncompliance therewith, shall be deemed as a waiver at any time thereafter of the same or any other term, condition, or covenant herein contained, nor of the strict and prompt performance thereof by the other. No option, right, power, remedy, or privilege of either party shall be construed as being exhausted or discharged by the exercise thereof in one or more instances. It is agreed that each and all of the rights, powers, options, or remedies given to each party by this Lease are cumulative and no one of them shall be exclusive of the others or exclusive of any remedies provided by law except as specifically provided herein, and the exercise of one right, power, option, or remedy, by either party, shall not impair its right to any other right, power, option, or remedy, except as specifically provided herein.

19. Miscellaneous Provisions

19.1 Usufruct

The rights of the Cabbagetown Initiative hereunder constitute a usufruct, which is not subject to levy or sale. No estate shall pass out of City.

19.2 Consent Not to be Unreasonably Withheld

Whenever consent or approval is required hereunder by either Party, such consent is not to be unreasonably withheld, or to be delayed for any unreasonable period of time.

19.3 Recording

The City and the Cabbagetown Initiative may record this Lease, any memorandum or short form of this Lease, or any affidavit with respect to this Lease, as a public record document in the appropriate office. The recording of this Lease does not grant an estate in the Premises.

19.4 Severability

If any clause or provision of this Lease is declared illegal, invalid or unenforceable under present or future laws effective during the Term of this Lease, then, in that event, it is the intention of the Parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the Parties hereto that in lieu of each clause or provision of this Lease that is

illegal, invalid, or unenforceable, there be added as a part of this Lease a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.

19.5 Gender

Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

19.6 Exhibits and Attachments

All exhibits, attachments, riders, memoranda of understanding, and addenda referred to in this Lease are incorporated into this Lease and made a part hereof by reference for all intents and purposes.

19.7 No Joint Venture

The City and the Cabbagetown Initiative are not and shall not be deemed to be, for any purpose, partners or joint-venturers with each other.

19.8 Time of the Essence

Time is expressed to be of the essence with regard to each provision of this Lease.

19.9 Evidence of the Cabbagetown Initiative

The Cabbagetown Initiative shall deliver to City such legal documentation to evidence that those signing this Lease are authorized by the Cabbagetown Initiative to bind the Cabbagetown Initiative to the commitments made in this Lease.

19.10 Applicability of Code Provisions

All terms of this Lease shall be governed by and shall be subject to all the provisions of the Code of Ordinances of the City of Atlanta now existing and as may be amended from time to time, to the extent they are not in conflict or inconsistent with applicable Federal Laws or State Laws.

19.11 Successors and Assigns

Each and all of the terms, conditions, and covenants of this Lease shall extend to and bind and inure to the benefit of City and the Cabbagetown Initiative, and the legal representatives, successors, and assigns of either or both of them.

19.12 Notices

All notices required to be given to the Cabbagetown Initiative hereunder shall be in writing and given by certified mail, return receipt requested, postage prepaid (with a copy sent via regular mail) addressed as follows:

ATTN: NAME
Cabbagetown Initiative

Atlanta, Georgia

or such other address as may be designated by THE CABBAGETOWN INITIATIVE by written notice to City. All notices required to be given to City hereunder shall be in writing and given by certified mail, return receipt requested, postage prepaid (with a copy sent via regular mail) addressed as follows:

ATTN: Commissioner, Department of Parks, Recreation and Cultural Affairs

675 Ponce de Leon Avenue, NE
8th Floor
Atlanta, Georgia 30308

or such other address as may be designated by City by written notice to the Cabbagetown Initiative.

No notice shall be effective if purported to be transmitted by telex, fax, or other electronic delivery. All notices shall be deemed received on the date noted on the return receipt; provided, however, as to any notice for which delivery is refused, that notice shall be deemed to have been received on the third (3rd) business day after the same was deposited, postpaid, with the United States Postal Service.

19.13 Interpretation

The language of this Lease shall be construed according to its fair meaning, and not strictly for or against either City or the Cabbagetown Initiative. This Lease shall be construed and performed according to the laws of the State of Georgia. The references to days shall mean calendar days unless otherwise stipulated.

19.14 Table of Contents and Section Headings

The table of contents and section headings contained herein are for the convenience of reference by City and the Cabbagetown Initiative and are not to be used to construe the intent of this Lease or any part hereof, nor to modify,

amplify, or aid in the interpretation or construction of any of the provisions hereof.

19.15 Integrated Agreement, Modification

This Lease contains the entire agreement of the parties with respect to the Premises and cannot be amended or modified except by written instrument, signed by the parties. If the parties hereto have entered previously, do now or in the future enter, into any other lease, license, permit or agreement covering other premises or facilities, this Lease and the terms, conditions, provisions, and covenants hereof, shall apply only to the demised Premises herein particularly described, and this Lease or any of the terms, conditions, provisions, or covenants hereof, shall not in any way or in any respect change, amend, modify, alter, enlarge, impair, or prejudice any of the rights, privileges, duties, or obligations, of either of the parties hereto under or by reason of any other said lease, permit, license, or agreement between said Parties.

19.16 Surrender and Merger

The voluntary or other surrender or termination of this Lease by the Cabbagetown Initiative, or a mutual cancellation hereof, shall not work a merger, and shall, at the option of the City, terminate all or any existing subleases or subtenancies applicable to the Premises, or may, at the option of the City, operate as an assignment to the City of all such subleases or subtenancies.

19.17 Quiet Enjoyment

The Cabbagetown Initiative, upon observing and keeping all of the covenants, terms, and provisions of this Lease Agreement on the part of the Cabbagetown Initiative to be observed and kept, shall lawfully and quietly hold, occupy, and enjoy the use of the Leased Premises during the term of this Lease Agreement.

19.18 Taxes

The City shall pay or cause to be paid, prior to delinquency, any lawful taxes and any assessments levied or assessed during the term hereof (a) on the Leased Premises, (b) on all property interests hereunder or in the Leased Premises, (c) on any improvements, fixtures, and equipment now or hereafter existing on the Leased Premises and on any personal property on, in or about any buildings or improvements therein.

19.19 Holding Over

Should the Cabbagetown Initiative hold over said Premises after this Lease Agreement has terminated in any manner, during such holding over the

Cabbagetown Initiative shall be deemed merely a tenant at sufferance, but otherwise on the same terms and conditions as herein provided.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their duly authorized officials or officers, to be attested, and their respective seals to be hereunto affixed, as of the day and year first above written.

ATTEST:
Sworn to and subscribed
Before me this _____ day
of _____, 2003.

_____
Notary Public

CABBAGETOWN INITIATIVE COMMUNITY DEVELOPMENT CORPORATION:

_____
DONNA K. WEBSTER, PRESIDENT

(Signatures Continued on Next Page)
ATTEST:

_____
Municipal Clerk (Seal)

CITY OF ATLANTA:

_____
SHIRLEY FRANKLIN, MAYOR

RECOMMENDED:

_____
Acting Commissioner,
Department of Parks, Recreation,
and Cultural Affairs

APPROVED:

_____
Chief Financial Officer

APPROVED AS TO FORM:

_____
City Attorney

APPROVED:

_____
Chief Procurement Officer

RCS# 5240
12/02/03
1:17 AM

Atlanta City Council

Regular Session

03-R-2167 LEASE AGRMNT CABBAGETOWN INITIATIVE COMM DEV CORP 177 ESTORIA ST
ADOPT

YEAS:	12
NAYS:	0
ABSTENTIONS:	0
NOT VOTING:	4
EXCUSED:	0
ABSENT	0

Y Smith	Y Archibong	Y Moore	Y Mitchell
Y Starnes	Y Fauver	Y Martin	NV Norwood
Y Young	Y Shook	Y Maddox	NV Willis
Y Winslow	NV Muller	Y Boazman	NV Woolard

03- R-2167

(Do Not Write Above This Line)

RESOLUTION BY COMMUNITY DEVELOPMENT/ HUMAN RESOURCES COMMITTEE

AUTHORIZING THE MAYOR TO ENTER INTO A LEASE AGREEMENT WITH CABBAGETOWN INITIATIVE COMMUNITY DEVELOPMENT CORPORATION, INC., FOR THE PURPOSE OF LEASING A CITY OF ATLANTA BUILDINGLOCATED AT 177 ESTORIA STREET, ATLANTA, GEORGIA 30316, LOCATED IN A PARK WITHIN CABBAGETOWN FOR A TEN (10) YEAR PERIOD, ON BEHALF OF THE DEPARTMENT OF PARKS, RECREATION AND CULTURAL AFFAIRS; AND FOR OTHER PURPOSES.

ADOPTED BY

DEC 0 1 2003

COUNCIL

- ☐ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☐ PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee

Date

Chair

Referred to

Committee CD/HR	Committee
Date 11/25/03	Date
Chair Debra M Starnes	Chair
Action: Fav, Adv, Hold (see rev. side) Other:	Action: Fav, Adv, Hold (see rev. side) Other:
Members	Members
Refer To	Refer To
Committee	Committee
Date	Date
Chair	Chair
Action: Fav, Adv, Hold (see rev. side) Other:	Action: Fav, Adv, Hold (see rev. side) Other:
Members	Members
Refer To	Refer To

FINAL COUNCIL ACTION

☐2nd ☐1st & 2nd Readings ☐3rd

☐Consent ☐V Vote ☑RC Vote

CERTIFIED

CERTIFIED

DEC 0 1 2003

PRESIDENT

CERTIFIED

DEC 0 1 2003

Rhonda Dauglin Johnson

MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

DEC 0 9 2003

MAYOR