



MATTIONI

COUNSELORS AT LAW

PLEASE REPLY TO: Philadelphia Office
mmattioni@mattioni.com

www.mattioni.com

FILE NO: 38818-90071

July 8, 2024

Jonathan E. Farnham, Ph.D.
Executive Director
Philadelphia Historical Commission
1515 Arch Street, 13th Floor
Philadelphia, PA 19102
Jon.Farnham@phila.gov

**Re: Comments from EB4200, LLC and SG4200, LLC
to the proposed Spruce Hill Historic District,
Southeast Quadrant**

Dear Dr. Farnham:

I represent EB4200, LLC and SG4200, LLC, owners of the properties located at 4200 and 4202 Chester Avenue a/k/a 600 S. 42nd Street ("Property"). The attached materials are presented with a request that the properties be considered vacant at the time of the approval of the Spruce Hill Historic District, Southeast Quadrant to allow the approved redevelopment of the Property to proceed.

Thank you for your consideration of this request.

Very truly yours,

MATTIONI, LTD.

Michael Mattioni

MM:sm

cc: EB4200, LLC
SG4200, LLC
Leonard Reuter, Esquire

{00608448-1} MATTIONI, LTD.

**Request to consider 4200 and 4202 Chester Avenue a/k/a 600 S. 42nd Street as VACANT
PROPERTIES at the time of Designation**

I. BACKGROUND

EB4200 LLC and SG4200 LLC (collectively “Owners”) acquired the properties located at 4200 and 4202 Chester Avenue a/k/a 600 S. 42nd Street (collectively “Property”) on December 17, 2021. A copy of the Deed is attached as Exhibit 1.

Immediately after acquiring the Property, the Owners started researching obtaining entitlements to develop the Property.

On January 13, 2022, the Property was included in a proposed 4200-30 Chester Avenue Historic District. The Owners requested, due to significant material changes to the Property and neighboring properties at 4204 and 4206 Chester Avenue, that the Property be excluded from the proposed historic district. The Historic Commission agreed, and the Property was excluded, and the proposed historic district was renamed the 4208-30 Chester Avenue Historic District. See Exhibit 2 which are letters from Jonathan E. Farnham, Ph. D., dated May 25, 2022, excluding the Property from the historic district.

Immediately thereafter, Owners re-started the entitlements process preparing plans for the approval for a multi-family development permitted as of right. The plans required numerous meetings with the Philadelphia City Planning Commission, staff representatives from the Department of Licenses and Inspections and others before final plans were submitted. It took thirteen (13) months to obtain a zoning permit, a copy of which is attached as Exhibit 3.

In the interim, based upon complaints regarding the use of the Property and life safety violations at the Property, the City filed a Complaint and Motion for Preliminary Injunction. Copies are attached as Exhibit 4. The initial Order entered in the case is attached as Exhibit 5.

The litigation with the City was finally amicably resolved and an Order was entered resolving the matter on May 31, 2024, a copy of which is attached as Exhibit 6.

The Owners, as part of the re-development and to address the claims of the City, agreed to demolish the structures on the Property which will address the issues raised by the City in its pleadings.

The demolition proposal is attached as Exhibit 7. It is dated February 23, 2024. Owners diligently pursued the demolition contract, with permits being obtained on June 19, 2024. See Exhibit 8 which is a copy of the demolition permits.

II. RELIEF REQUESTED

The structure remains on the Property but would have been demolished long ago had the Owners not had to defend claims by the City for actions of the prior owner, tenants and occupants. The operator of the establishment when the Owners acquired the Property operated

without permits and created a public nuisance. Owners had to spend significant funds and time addressing the issues with the Property.

When the demolition permits were applied for the Historical Commission staff granted the permits. The demolition will commence on or about July 22, 2024 and will leave a vacant property.

The Owners request that the Property be considered as a vacant property for purposes of review by the Historical Commission staff when it is redeveloped which means that the Historical Commission would have review and comment rather than full plenary review regarding the re-development of the Property. This request is consistent with the decision of the Historical Commission to exclude the Property from the original historic district proposed to include the Property. See Exhibit 2. The Historical Commission cannot now seek to have plenary control over the re-development of the Property after already excluding it from one historic district.

The Property, which will be vacant as of mid-August 2024, should be viewed and approved as a vacant property which will permit redevelopment plans to be processed on a review and comment basis rather than with full plenary review by the Historical Commission.

III. **CONCLUSION**

For all of the reasons set forth in this Request, the Owners request that the Property at 4200 and 4202 Chester Avenue a/k/a 600 S. 42nd Street, be considered as vacant as of the date of the Nomination Petition to allow for review and comment only by the Historical Commission of any proposed development at the Property.

Mattioni, Ltd.

Date: July 8, 2024


By: 
Michael Mattioni, Esquire
Attorney for EB4200 LLC and SG4200 LLC

EXHIBIT 1

Prepared By:
Commonwealth Land Title Insurance Company
1700 Market Street, Suite 2100
Philadelphia, PA 19103

Return To:
Commonwealth Land Title Insurance Company
1700 Market Street, Suite 2100
Philadelphia, PA 19103

TW File # 9720722
File # PHI212215

This Indenture Made this 1st day of December, 2021 to be effective
As of the 17th day of December, 2021

Between

4200 Chester, LLC, a Pennsylvania Limited Liability Company
(hereinafter called the Grantor),

AND

EB4200, LLC, a Pennsylvania Limited Liability Company and SG4200, LLC, a
Pennsylvania limited liability company
(hereinafter called the Grantee),

Witnesseth That the said Grantor for and in consideration of the sum of one million five hundred thousand dollars and zero cents (\$1,500,000.00) lawful money of the United States of America, unto Grantor well and truly paid by the said Grantee and at or before the sealing and delivery hereof, the receipt whereof is hereby acknowledged, has granted, bargained and sold, released and confirmed, and by these presents does grant, bargain and sell, release and confirm unto the said Grantee and Grantee's heirs, successors and assigns,

Premises A

ALL THAT CERTAIN lot or piece of ground with the buildings and improvements thereon erected.

SITUATE on the South side of Chester Avenue and the West side of 42nd Street, in the Twenty-seventh Ward of the City of Philadelphia.

Fee Simple Deed

TW File # 9720722
File # PHI212215

CONTAINING in front or breadth on the said Chester Avenue Twenty-seven feet and extending of that width in length or depth Southward along the West side of said 42nd Street, One Hundred Seventy-six feet, Six inches.

BEING known as 4200 Chester Avenue.

Premises B

ALL THAT CERTAIN lot or piece of ground with the buildings and improvements thereon erected.

SITUATE on the South side of Chester Avenue at the distance of 27 feet from the West side of 42nd Street in the 27th Ward of the City of Philadelphia.

CONTAINING in front or breadth on the said side of Chester Avenue 27 feet and extending of that width in length or depth Southward between parallel lines at right angles to the said Chester Avenue 176 feet 6 inches.

BOUNDED East, South and West by ground now or late of Thomas Clark and North by Chester Avenue, aforesaid.

BEING known as 4202 Chester Avenue.

Being as to premises A and B the same premises which 4200-02 Chester Associates, LLC, a Pennsylvania limited liability company by Deed in Lieu of Foreclosure dated 11/21/2018 and recorded 12/13/2018 in Philadelphia County in Document 53453539 conveyed unto 4200 Chester, LLC, in fee.

TW File # 9720722
File # PHI212215

Together with all and singular improvements, ways, streets, alleys, driveways, passages, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever unto the hereby granted premises belonging, or in any wise appertaining, and the reversions and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, property, claim and demand whatsoever of the said Grantor and Grantor's heirs, successors and assigns, as well at law as in equity, of, in, and to the same.

To have and to hold the said lot(s) or piece(s) of ground above described with the hereditaments and premises hereby granted, or mentioned, and intended so to be, with the appurtenances, unto the said Grantee and Grantee's heirs, successors and assigns to and for the only proper use and behoof of the said Grantee and Grantee's heirs, successors and assigns, forever,


And the said Grantor and Grantor's heirs, successors and assigns do by these presents, covenant, grant and agree, to and with the said Grantee and Grantee's heirs, successors and assigns, that the said Grantor and Grantor's heirs, successors and assigns all and singular the Hereditaments and premises herein above described and granted, or mentioned and intended so to be with the Appurtenances unto the said Grantee and Grantee's heirs, successors and assigns, against the said Grantor and Grantor's heirs, successors and assigns all and every Person or Persons whomsoever lawfully claiming or to claim the same or any part thereof, by from, or under Grantor and Grantor's heirs, successors and assigns shall and will WARRANT and forever DEFEND.

TW File # 9720722
File # PHI212215

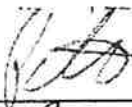
In Witness Whereof, the said Grantor has caused these presents to be duly executed dated the day and year first above written.

Sealed and Delivered
IN THE PRESENCE OF US

4200 Chester LLC, a Pennsylvania limited liability company

By: 
Name: Peter Stasz
Title: Managing Member

4200 Chester LLC, a Pennsylvania limited liability company

By: 
Name: Peter Stasz
Title: MANAGING MEMBER

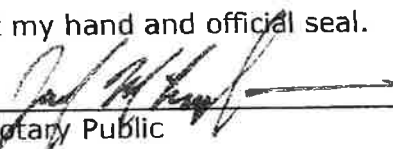
TW File # 9720722
File # PHI212215

COMMONWEALTH OF PENNSYLVANIA)
SS)
COUNTY OF MONTGOMERY)

On this, the 1st day of December, A.D. 2021, before me, a notary public the undersigned officer, personally appeared Peter Staz who acknowledged himself to be the member of 4200 Chester LLC and that he as such member being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the ****** by himself as member. **** limited liability company**

In Witness Whereof, I hereunto set my hand and official seal.

Commonwealth of Pennsylvania - Notary Seal
Joseph McLoughlin, Notary Public
Montgomery County
My commission expires July 22, 2024
Commission number 1243630


Notary Public

My Commission Expires: _____

COMMONWEALTH OF PENNSYLVANIA)
SS)
COUNTY OF MONTGOMERY)

On this, the 1st day of December, A.D. 2021, before me, a notary public the undersigned officer, personally appeared Peter Spain who acknowledged himself to be the member of 4200 Chester, LLC, and that he as such member being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the ****** by himself as member. **** limited liability company**

In Witness Whereof, I hereunto set my hand and official seal.

Commonwealth of Pennsylvania - Notary Seal
Joseph McLoughlin, Notary Public
Montgomery County
My commission expires July 22, 2024
Commission number 1243630


Notary Public

My Commission Expires: _____

TW File # 9720722
File # PHI212215

DEED

Grantor: 4200 Chester, LLC, a Pennsylvania Limited Liability Company

TO


Grantee: EB4200, LLC, a Pennsylvania Limited Liability Company and
SG4200, LLC, a Pennsylvania limited liability company

PREMISES

4200-4202 Chester Avenue
City of Philadelphia
Philadelphia County, PA

The address of the above named Grantee is:

4200 CHESTER AVENUE
PHILADELPHIA, PA 19104

Certified by: 

TW File # 9720722
File # PHI212215

Fee Simple Deed



REV-183
 BUREAU OF INDIVIDUAL TAXES
 PO BOX 280603
 HARRISBURG, PA 17128-0603

1830019105

**REALTY TRANSFER TAX
 STATEMENT OF VALUE**
 COMPLETE EACH SECTION

RECORDER'S USE ONLY

State Tax Paid: _____
 Book: _____ Page: _____
 Instrument Number: _____
 Date Recorded: _____

SECTION I TRANSFER DATA

Date of Acceptance of Document: _____

Grantor(s)/Lessor(s) 4200 Chester, LLC	Telephone Number	Grantee/Grantee(s) 204700, LLC 7-56 4700, LLC	Telephone Number
Mailing Address 283 2nd Street Pike - Suite 100	Mailing Address 4200 CHESTER AVENUE		
City Southampton	State PA	ZIP Code 18966	City PHILADELPHIA
			State PA
			ZIP Code 19104

SECTION II REAL ESTATE LOCATION

Street Address 4200 & 4202 Chester Avenue	City, Township, Borough Philadelphia
County Philadelphia	School District Philadelphia
	Tax Parcel Number 871299720 & 871286300

SECTION III VALUATION DATA

Was transaction part of an assignment or relocation? YES NO

1. Actual Cash Consideration 1,500,000.00	2. Other Consideration + 0.00	3. Total Consideration = 1,500,000.00
4. County Assessed Value 1,512,500.00	5. Common Level Ratio Factor x 1.07	6. Computed Value = 1,618,375.00

SECTION IV EXEMPTION DATA - Refer to instructions for exemption status.

1a. Amount of Exemption Claimed \$ 0.00	1b. Percentage of Grantor's Interest in Real Estate 100 %	1c. Percentage of Grantor's Interest Conveyed 100 %
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2. Check Appropriate Box Below for Exemption Claimed.
- Will or intestate succession. _____ (Name of Decedent) _____ (Estate File Number)
 - Transfer to a trust. (Attach complete copy of trust agreement and all amendments.)
 - Transfer from a trust. (Attach complete copy of trust agreement and all amendments.)
 - Transfer between principal and agent/straw party. (Attach complete copy of agency/straw party agreement.)
 - Transfers to the commonwealth, the U.S. and instrumentalities by gift, dedication, condemnation or in lieu of condemnation. (If condemnation or in lieu of condemnation, attach copy of resolution.)
 - Transfer from mortgagor to a holder of a mortgage in default. (Attach copy of mortgage and note/assignment.)
 - Corrective or confirmatory deed. (Attach complete copy of the deed to be corrected or confirmed.)
 - Statutory corporate consolidation, merger or division. (Attach copy of articles.)
 - Other (Provide a detailed explanation of exemption claimed. If more space is needed attach additional sheets.)

SECTION V CORRESPONDENT INFORMATION - All inquiries may be directed to the following person:

Name 4200 Chester, LLC	Telephone Number
Mailing Address 283 2nd Street Pike - Suite 100	City Southampton
	State PA
	ZIP Code 18966

Under penalties of law, I declare that I have examined this statement, including accompanying information, and to the best of my knowledge and belief, it is true, correct and complete.

Signature of Correspondent or Responsible Party: _____ Date: **2/1/2021**

FAILURE TO COMPLETE THIS FORM PROPERLY OR ATTACH REQUESTED DOCUMENTATION MAY RESULT IN THE RECORDER'S REFUSAL TO RECORD THE DEED.



1830019105

1830019105

<h2 style="margin: 0;">PHILADELPHIA REAL ESTATE TRANSFER TAX CERTIFICATION</h2>	BOOK NO. _____ PAGE NO. _____ DATE RECORDED _____ CITY TAX PAID _____
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Complete each section and file in duplicate with Recorder of Deeds when (1) the full consideration/value is/is not set forth in the deed, (2) when the deed is with consideration, or by gift, or (3) a tax exemption is claimed. If more space is needed, attach additional sheet(s).

A. CORRESPONDENT — All inquiries may be directed to the following person:

NAME 4200 Chester, LLC	TELEPHONE NUMBER: AREA CODE ()
STREET ADDRESS 283 2nd Street Pike - Suite 100	CITY STATE ZIP CODE Southampton PA 18966

B. TRANSFER DATA

GRANTOR(S)/LESSOR(S) 4200 Chester, LLC	DATE OF ACCEPTANCE OF DOCUMENT: GRANTEE(S)/LESSEE(S) PB 4200, LLC & SB 4200, LLC
STREET ADDRESS 283 2nd Street Pike - Suite 100	STREET ADDRESS 4700 CHESTER AVENUE
CITY STATE ZIP CODE Southampton PA 18966	CITY STATE ZIP CODE PHILADELPHIA PA 19104

C. PROPERTY LOCATION

STREET ADDRESS 4200 & 4202 Chester Avenue	CITY, TOWNSHIP, BOROUGH Philadelphia
COUNTY Philadelphia	SCHOOL DISTRICT Philadelphia
TAX PARCEL NUMBER 871299720 & 871286300	

D. VALUATION DATA

1. ACTUAL CASH CONSIDERATION \$1,500,000.00	2. OTHER CONSIDERATION + \$0.00	3. TOTAL CONSIDERATION = \$1,500,000.00
4. COUNTY ASSESSED VALUE \$1,512,500.00	5. COMMON LEVEL RATIO FACTOR x 1.07	6. FAIR MARKET VALUE = \$1,618,375.00

E. EXEMPTION DATA

1A. AMOUNT OF EXEMPTION 0	1B. PERCENTAGE OF INTEREST CONVEYED 100%
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2. Check Appropriate Box Below for Exemption Claimed

- Will or intestate succession _____
(NAME OF DECEDENT) (ESTATE FILE NUMBER)
- Transfer to Industrial Development Agency.
- Transfer to agent or straw party. (Attach copy of agency/straw party agreement).
- Transfer between principal and agent. (Attach copy of agency/straw trust agreement). Tax paid prior deed \$ _____.
- Transfers to the Commonwealth, the United States, and Instrumentalities by gift, dedication, condemnation or in lieu of condemnation. (Attach copy of resolution).
- Transfer from mortgagor to a holder of a mortgage in default. Mortgage Book Number _____, Page Number _____.
Mortgagee (grantor) sold property to Mortgagor (grantee) (Attach copy of prior deed).
- Corrective deed (Attach copy of the prior deed).
- Other (Please explain exemption claimed, if other than listed above.) _____

Under penalties of law or ordinance, I declare that I have examined this Statement, including accompanying information, and to the best of my knowledge and belief, it is true, correct and complete.

SIGNATURE OF CORRESPONDENT OR RESPONSIBLE PARTY 	DATE 2/1/2021
---	------------------

EXHIBIT 2



CITY OF PHILADELPHIA

PHILADELPHIA HISTORICAL
COMMISSION

1515 Arch Street, 13th Floor
Philadelphia, Pennsylvania 19102
Tel: 215.686.7660

Robert Thomas, AIA
Chair

Jonathan E. Farnham, Ph.D.
Executive Director

25 May 2022

4200-02 CHESTER ASSOCIATES
4200 CHESTER AVE
PHILADELPHIA PA 19104

Re: 4208-30 Chester Avenue Historic District, 4200 CHESTER AVE

Dear 4200-02 CHESTER ASSOCIATES:

On 13 January 2022, the Philadelphia Historical Commission informed you in writing that it would consider designating the 4200-30 Chester Avenue Historic District as historic, which would have included the property at 4200 CHESTER AVE. Following that notice, the Historical Commission and its advisory Committee on Historic Designation reviewed the document defining the proposed designation, called a nomination, and accepted testimony on the matter at public meetings. At the conclusion of its review on 13 May 2022, the Historical Commission excluded the properties at 4200, 4202, 4204, and 4206 Chester Avenue from the historic district and designated the 4208-30 Chester Avenue Historic District as historic and listed it on the Philadelphia Register of Historic Places, pursuant to the City's historic preservation ordinance, Section 14-1000 of the Philadelphia Code. The Historical Commission did not include the property at 4200 CHESTER AVE in the historic district and it is no longer subject to the Historical Commission's regulation.

Please do not hesitate to contact the Commission's staff with any questions by email at preservation@phila.gov. The Historical Commission's website also provides information. It can be found at <http://www.phila.gov/historical>.

Yours truly,

A handwritten signature in black ink, appearing to read "Jon Farnham".

Jonathan E. Farnham, Ph.D.
Executive Director



CITY OF PHILADELPHIA

PHILADELPHIA HISTORICAL
COMMISSION

1515 Arch Street, 13th Floor
Philadelphia, Pennsylvania 19102
Tel: 215.686.7660

Robert Thomas, AIA
Chair

Jonathan E. Farnham, Ph.D.
Executive Director

25 May 2022

4200-02 CHESTER ASSOCIATES
4202 CHESTER AVE
PHILADELPHIA PA 19104

Re: 4208-30 Chester Avenue Historic District, 4202 CHESTER AVE

Dear 4200-02 CHESTER ASSOCIATES:

On 13 January 2022, the Philadelphia Historical Commission informed you in writing that it would consider designating the 4200-30 Chester Avenue Historic District as historic, which would have included the property at 4202 CHESTER AVE. Following that notice, the Historical Commission and its advisory Committee on Historic Designation reviewed the document defining the proposed designation, called a nomination, and accepted testimony on the matter at public meetings. At the conclusion of its review on 13 May 2022, the Historical Commission excluded the properties at 4200, 4202, 4204, and 4206 Chester Avenue from the historic district and designated the 4208-30 Chester Avenue Historic District as historic and listed it on the Philadelphia Register of Historic Places, pursuant to the City's historic preservation ordinance, Section 14-1000 of the Philadelphia Code. The Historical Commission did not include the property at 4202 CHESTER AVE in the historic district and it is no longer subject to the Historical Commission's regulation.

Please do not hesitate to contact the Commission's staff with any questions by email at preservation@phila.gov. The Historical Commission's website also provides information. It can be found at <http://www.phila.gov/historical>.

Yours truly,

A handwritten signature in black ink, appearing to read 'Jon Farnham', with a long horizontal flourish extending to the right.

Jonathan E. Farnham, Ph.D.
Executive Director

EXHIBIT 3

Zoning Permit

Permit Number ZP-2023-002568

LOCATION OF WORK

4200 CHESTER AVE T-A-254624, Philadelphia, PA 19104

PERMIT FEE

\$986.00

DATE ISSUED

2/7/2024

ZBA CALENDAR

ZBA DECISION DATE

ZONING DISTRICTS

CMX1

PERMIT HOLDER

OWNER CONTACT 1

Thomas Donatucci

4200 Chester Ave, Philadelphia, PA 19104

OWNER CONTACT 2

TYPE OF WORK

New construction, addition, GFA change

APPROVED DEVELOPMENT

FOR THE COMPLETE DEMOLITION OF THE EXISTING STRUCTURE AND THE ERECTION A DETACHED STRUCTURE WITH ROOF DECK ACCESS STRUCTURE AND GREENROOF. SIZE AND LOCATION AS SHOWN IN APPLICATION/PLANS.

APPROVED USE(S)

Residential - Household Living - Multi-Family

THIS PERMIT IS SUBJECT TO THE FOLLOWING PROVISO(S) AS ESTABLISHED BY THE ZONING BOARD OF ADJUSTMENT (ZBA)



CONDITIONS AND LIMITATIONS:

• Permits, including Zoning Permits **not** involving development, shall expire if the authorized work or Use is not commenced within, or if work is suspended or abandoned for period of, **six (6) months from the date of issuance** with the following exceptions:

- **30-days or 10-days** for Permits related to Unsafe or imminently Dangerous properties respectively.
- **3-years** from issuance or date of decision by ZBA for Zoning Permits involving development
- **60-days** for Plumbing, Electrical or Fire Suppression Rough-in Approvals
- Any Permit issued for construction or demolition is valid for no more than **five (5) years**.

• All provisions of the Philadelphia Code must be complied with, whether specified herein or not. This permit does NOT constitute approval of any Violation of such Code.

• The issuance of this CO/permit does not affirm that the subject property is federally compliant with the Americans with Disabilities Act. Owner remains responsible for ensuring property complies with all local, state and federal requirements.

Zoning Permit

Permit Number ZP-2023-002568

ADDITIONAL LOCATION(S)

See front side for primary parcel associated with this permit

PARCEL

4200 CHESTER AVE T-A-254624, Philadelphia, PA 19104

ADDITIONAL USE DETAILS

See front side for specific use(s) associated with this permit

CONTAINING 34 DWELLING UNITS (SEVEN (7) AFFORDABLE UNITS PER MIN OVERLAY), 12 BICYCLE PARKING SPACES, AND A GREEN ROOF

This permit is subject to the following specific conditions.

CONDITIONS

This Zoning Permit (ZP) shall expire if construction or operation pursuant to the permit or approval has not begun within three years after the date the permit or approval was granted.

Changes of use shall be valid for a period of six months unless an application for a Certificate of Occupancy is submitted for that use within such period.

See § 14-303 of the Philadelphia Zoning Code for more information.



Tax Exemption(Abatement): Information and applications for Real Estate Tax Abatement for new construction and improvements available from the Office of Property Assessment www.phila.gov/opa, 215-686-4334, 601 Walnut St., 300W, Phila, PA 19106. Applications for new construction and commercial improvements due within 60 days of permit issuance. Residential rehab and builder/developer applications due by Dec 31 of year of permit issuance

EXHIBIT 4

**PHILADELPHIA COURT OF COMMON PLEAS
PETITION/MOTION COVER SHEET**

CONTROL NUMBER: 23114553 (RESPONDING PARTIES MUST INCLUDE THIS NUMBER ON ALL FILINGS)

FOR COURT USE ONLY	
ASSIGNED TO JUDGE:	ANSWER/RESPONSE DATE:
Do not send Judge courtesy copy of Petition/Motion/Answer/Response. Status may be obtained online at http://courts.phila.gov	

November Term, 2023
Month Year
No. 02137

CITY OF PHILADELPHIA VS UVC INC ETAL

Name of Filing Party:
CITY OF PHILADELPHIA-PLF

INDICATE NATURE OF DOCUMENT FILED:
 Petition (Attach Rule to Show Cause) Motion
 Answer to Petition Response to Motion

Has another petition/motion been decided in this case? Yes No
Is another petition/motion pending? Yes No
 If the answer to either question is yes, you must identify the judge(s):

TYPE OF PETITION/MOTION (see list on reverse side) PRELIMINARY INJUNCTION	PETITION/MOTION CODE (see list on reverse side) PRINJ
ANSWER / RESPONSE FILED TO (Please insert the title of the corresponding petition/motion to which you are responding):	
I. CASE PROGRAM OTHER PROGRAM Court Type: <u>CODE ENFORCEMENT-CITY OF PHILA</u> Case Type: <u>EQUITY - NO REAL ESTATE (TRO)</u>	II. PARTIES (required for proof of service) (Name, address and telephone number of all counsel of record and unrepresented parties. Attach a stamped addressed envelope for each attorney of record and unrepresented party.) JEFFREY D COHEN 1515 ARCH ST. 15TH FLOOR , PHILADELPHIA PA 19102 UVC INC 4200-02 CHESTER AVENUE , PHILADELPHIA PA 19104 UVC INC 38 OSPREY WAY , ELKTON MD 21921 EB4200 LLC 4200-02 CHESTNUT AVENUE , PHILADELPHIA PA 19104 EB4200 LLC C/O MEMBER EDWARD BROWN 2228 HILLTOP VIEW ROAD , UNIONVILLE PA 19320 SG4200 LLC 4200-02 CHESTER AVENUE , PHILADELPHIA PA 19104
III. OTHER	

By filing this document and signing below, the moving party certifies that this motion, petition, answer or response along with all documents filed, will be served upon all counsel and unrepresented parties as required by rules of Court (see PA. R.C.P. 206.6, Note to 208.2(a), and 440). Furthermore, moving party verifies that the answers made herein are true and correct and understands that sanctions may be imposed for inaccurate or incomplete answers.

(Attorney Signature/Unrepresented Party) November 20, 2023 JEFFREY D. COHEN
(Date) (Print Name) (Attorney I.D. No.)

**The Petition, Motion and Answer or Response, if any, will be forwarded to the Court after the Answer/Response Date.
No extension of the Answer/Response Date will be granted even if the parties so stipulate.**

SG4200 LLC C/O MEMBER SUSAN GARBER
2228 HILLTOP VIEW ROAD , UNIONVILLE
PA 19320

FILED

20 NOV 2023 02:55 pm

Civil Administration

J. BOYD

**CITY OF PHILADELPHIA, LAW DEPARTMENT
KRISTIN K. BRAY, ACTING CITY SOLICITOR**

By: Jeffrey Cohen, Deputy City Solicitor
Attorney Identification No. 318670
1515 Arch St., 15th Floor
Philadelphia, PA 19102
(215) 683-5412; Jeffrey.Cohen@phila.gov

CITY OF PHILADELPHIA	:	COURT OF COMMON PLEAS
Plaintiff,	:	PHILADELPHIA COUNTY
	:	CIVIL TRIAL DIVISION
	:	
v.	:	
	:	
UVC INC.	:	NOVEMBER TERM, 2023
4200-02 CHESTER AVENUE	:	
PHILADELPHIA, PA 19104	:	NO. 02137
and	:	
UVC INC. C/O PRES. JACK GILLESPIE	:	
38 OSPREY WAY	:	
ELKTON, MD 21921	:	
	:	
and	:	
	:	
EB4200 LLC	:	
4200-02 CHESTER AVENUE	:	
PHILADELPHIA, PA 19104	:	
and	:	
EB4200 LLC C/O MEMBER EDWARD BROWN	:	
2228 HILLTOP VIEW ROAD	:	
UNIONVILLE, PA 19320	:	
	:	
and	:	
	:	
SG4200 LLC	:	
4200-02 CHESTER AVENUE	:	
PHILADELPHIA, PA 19104	:	
and	:	
SG4200 LLC C/O MEMBER SUSAN GARBER	:	
2228 HILLTOP VIEW ROAD	:	
UNIONVILLE, PA 19320	:	
	:	
Defendants.	:	

EMERGENCY PETITION FOR PRELIMINARY INJUNCTION

(continued on next page)

Case ID: 231102137
Control No.: 23114553

Plaintiff, City of Philadelphia (hereinafter, the “Plaintiff” or “City”), files this Emergency Petition for Preliminary Injunction. Plaintiff respectfully requests that this Court issue a preliminary injunction to Pa.R.C.P. 1531 to:

(1) immediately vacate the subject premises at 4200 Chester Avenue, Philadelphia, Pennsylvania (the “subject premises”) pursuant to an existing Cease Operations Order issued by the City Department of Licenses and Inspections;

(2) require that the Cease Operations Order shall not be lifted unless and until:

a. The Defendants have removed the disk jockey booth and all disk jockey equipment from the subject premises;

b. The Defendants have removed all tobacco products from the subject premises;

c. The Defendants have complied all outstanding violations cited in Notices of Violations nos. CF-2022-023147, CF-2023-011900, CF-2023-012667, and CF-2023-099211;

d. The Department has reinspected the subject premises to confirm compliance of the above three (3) conditions; and,

e. The Court has given its approval to modify its Injunction and Order;

(3) prohibit the Defendants from holding special assembly occupancies at the subject premises without a license to do so, and prohibit them from having any disk jockey equipment on the premises; and,

(4) prohibit the Defendants from selling tobacco products at the subject premises without a permit to do so, and prohibit them from having any tobacco products on the premises.

In support thereof, Plaintiff alleges as follows:

PARTIES

1. Plaintiff, City of Philadelphia, is a municipal corporation of the first class of the Commonwealth of Pennsylvania under the Act of April 21, 1949, P.L. 665, § 1, *et seq.*

2. Defendants EB4200 LLC (hereinafter, “Defendant EB4200”) and SG4200 LLC (hereinafter, “Defendant SG4200”) are the owners of record and otherwise responsible parties for the premises located at 4200 Chester Avenue and 4202 Chester Avenue, Philadelphia, Pennsylvania with the City Office of Property Assessment (“OPA”) Account nos. 871299720 and 871286300 (collectively, the “subject premises”).

3. Defendant EB4200 is a limited liability company that maintains an address at the subject premises.

4. Defendant EB4200 is registered with the Commonwealth of Pennsylvania Department of State with a registered mailing address of 2228 Hilltop View Road, Unionville, PA 19320.

5. Defendant SG4200 is a limited liability company that maintains an address at the subject premises.

6. Defendant SG4200 is registered with the Commonwealth of Pennsylvania Department of State with a registered mailing address of 2228 Hilltop View Road, Unionville, PA 19320.

7. Defendant UVC Inc. (hereinafter, “Defendant UVC”) is the operator of the business at the subject premises.

8. Defendant UVC is a corporate entity that maintains an address at the subject premises.

9. Defendant UVC is registered with the Commonwealth of Pennsylvania Department of State with a registered mailing address of the subject premises.

10. The business at the subject premises is a nightclub that has been called “Mill Creek Tavern,” “Crown Lounge,” “Deuces Lounge,” and “Deuces Philly.”

11. The subject premises is located in a residential neighborhood in the University City neighborhood of Southwest Philadelphia

12. The subject premises is within 500 feet of the Jubilee School at 4211 Chester Avenue, Philadelphia, Pennsylvania, which is a K-12 school.

13. The subject premises is one block away from Clark Park and one block away from the Woodlands, which contains an arboretum, community garden, and cemetery.

14. As provided by the Administrative Code of the City of Philadelphia (Subcode “A”) of Title 4 of the Philadelphia Code of General Ordinances at A-401.2, it is the duty of the City Department of Licenses and Inspections (the “Department”) to inspect premises in the City of Philadelphia to determine compliance with the requirements of the Philadelphia Code, issue notices of violation to individuals whom are not in compliance with the Philadelphia Code, and to bring legal actions against individuals in violation of the Code pursuant to A-501.1, A-502, *et seq.*, and A-503, *et seq.*

VIOLATIONS AT THE SUBJECT PREMISES

15. Since March 2022, the Department has repeatedly cited the Defendants for violations involving the operation of the subject premises as a nightclub.

16. On the following dates, the Department sent the following Defendants Initial Notices of Violations, in accordance with the requirements of Philadelphia Code Sections 1-110

and A-502 *et seq.*, informing them of the existence of violations of the Philadelphia Code of General Ordinances at the subject premises and ordering the timely correction of these violations.

- a. #CF-2022-023147 (Fire Code violations and unpermitted boarding of windows), issued and sent on March 22, 2022 to Defendant UVC, Exhibit “A-1”;
- b. #CF-2022-023147 (Fire Code violations and unpermitted boarding of windows), issued and sent on July 19, 2022 to Defendant EB4200 and Defendant SG4200, Exhibits “A-3” and “A-4”;
- c. #CF-2023-106520 (Fire Code violations, some of which are repeats), issued and sent on October 19, 2022 to Defendant UVC and Defendant EB4200, Exhibits “B-1” and “B-2”;
- d. #CF-2023-011900 (Fire Code violations, some of which are repeats), issued and sent on February 14, 2023 to Defendant EB4200 and Defendant SG4200, Exhibit “C-1”;
- e. #CF-2023-012667 (Fire escape testing and certification required), issued and sent on February 16, 2023 to Defendant EB4200 and Defendant SG4200, Exhibit “D”;
- f. #CF-2023-099211 (Leak in basement main line, oil spill in rear parking lot), issued and sent on September 26, 2023 to Defendant EB4200, Exhibit “E-1”; and,
- g. #CF-2023-107917 (Operating without the required Special Assembly Occupancy License), issued and sent on October 20, 2023 to Defendant UVC, Defendant EB4200, and Defendant SG4200, Exhibits “F-6” and “F-7”.

17. Each of the above Initial Notices of Violations informed the Defendants of their rights to file an appeal within thirty (30) days from the date of the Initial Notices. *See* Exhibits “A-1”, “A-3”, “A-4”, “B-1”, “B-2”, “C-1”, “D”, “E-1”, “F-6”, and “F-7”.

18. The Defendants did not file an appeal to the Boards Administration from the issuance of any of the Violation Notices attached as Exhibits “A-1”, “A-3”, “A-4”, “B-1”, “B-2”, “C-1”, “D”, “E-1”, “F-6”, and “F-7”.

19. As the Defendants have not availed themselves of the administrative remedies provided in the Philadelphia Home Rule Charter and Section 800 of the Administrative Code, sub-code of Title 4, The Building Construction and Occupancy Code, the Defendants are precluded from challenging the violations and/or notice of violation at issue. *See Gans v. City of Phila.*, 403 A.2d 168, 171 (Pa. Cmwlth. 1979).

20. To date, the Violation Cases listed in Exhibits “A-1”, “A-3”, “A-4”, “C-1”, “D”, “E-1”, “F-6”, and “F-7” are not fully complied.

SPECIAL ASSEMBLY OCCUPANCIES PROHIBITED AT THE SUBJECT PREMISES

21. Over the past several years, several disturbances, fights, assaults, reports of persons with a gun, litter, noise, parking violations, and repeated violations of operating outside of lawful operating hours have occurred at the subject premises in its operation as a nightclub.

22. In Philadelphia, all nightclubs are required to possess a Special Assembly Occupancy License (“SAOL”). *See* Phila. Code § 9-703(1)(a)-(b) (defining a special assembly occupancy as a type of establishment, including a nightclub, discotheque, cabaret, tavern, bar, or restaurant, which provides social entertainment for 50 or more people at least once a year, including but not limited to dancing, entertainment by live or recorded music, and/or disk jockeys);

Id. at § 9-703(2)(a) (no person shall operate a special assembly occupancy “without first obtaining a special assembly occupancy license”).

23. Prior to October 21, 2022, Defendant UVC possessed SAOL no. 716433 for the subject premises.

24. However, due to the disturbances, fights, assaults, reports of persons with a gun, litter, noise, parking violations, and repeated violations of operating outside of lawful operating hours which occurred at the subject premises, on October 21, 2022, the Department issued a Notice of Revocation (the “Notice of Revocation”) to Defendant UVC informing it that the Department was revoking its SAOL no. 716433 based on disapproval from the Police Department’s 18th District. *See* Exhibit “F-2”; *see also* Phila. Code § 9-703(2)(b)(.4)(c) (no SAOL “shall be issued or renewed by the Department unless” the location is “a safe and proper place for the purposes of special assembly occupancy”, which includes that the location is found suitable “taking into consideration such factors as crime, traffic, litter, noise, parking and hours of operation” taking into account community considerations and the views of the Police Department).

25. Despite the revocation action, at all times relevant to this action, including after October 21, 2022, Defendant UVC has operated a nightclub at the subject premises which has required it to possess an SAOL.

26. On multiple occasions over the past two years, Defendant UVC has held special events at the subject premises, including but not limited to providing entertainment by recorded music and/or disk jockeys.

27. On multiple occasions over the past two years, Defendant UVC has advertised these special events on social media.

28. On multiple occasions over the past two years, the subject premises was inspected and found to be in violation of the Philadelphia Code with respect to fire safety and emergency exits. *See* Exhibits “A-1”, “A-2”, “A-3”, “A-4”, “B-1”, “B-2”, “B-3”, “B-4”, “C-1”, “C-2”, “D”, “E-1”, and “E-2”.

29. On October 28, 2022, David Joseph, a manager under the employ of Defendant UVC, filed an appeal from the October 21, 2022 Notice of Revocation to the Board of Licenses and Inspections Review (“BLIR”), which was given BLIR Appeal no. HA-2022-004420. *See* Exhibit “F-3”.

30. From October 28, 2022 and October 10, 2023, Defendant UVC continued to operate a nightclub at the subject premises for which an SAOL was required.

31. From October 28, 2022 to October 10, 2023, on multiple occasions, the subject premises was inspected and found to be in violation of the Philadelphia Code with respect to fire safety and emergency exits. *See* Exhibits “C-1”, “C-2”, “D”, “E-1”, and “E-2”.

32. From October 28, 2022 and October 10, 2023, several more instances of disturbances, fights, assaults, reports of persons with a gun, litter, noise, parking violations, and repeated violations involving operating outside of lawful operating hours occurred.

33. On October 9, 2023, Defendant UVC emailed BLIR to withdraw Appeal no. HA-2022-004420.

34. On October 10, 2023, BLIR issued a Notice of Decision that Appeal no. HA-2022-004420 was “City Affirmed” for both a failure to prosecute and for David Joseph’s lack of standing to appeal on behalf of Defendant UVC. *See* Exhibit “F-4”.

35. Thus, as of October 10, 2023, Defendant UVC was aware that the SAOL for the subject premises was revoked and was no longer active.

36. Thus, as of October 10, 2023, Defendant UVC knew that it was not permitted to operate any special events at the subject premises.

37. Despite knowing that it was not permitted to operate any special events after October 10, 2023, Defendant UVC advertised a “Friday the 13th” Party with a disk jockey to occur at the subject premises on the night of October 13, 2023.

38. Despite knowing that it was not permitted to operate any special events, on the night of October 13, 2023 and the early morning of October 14, 2023, Defendant UVC held a special event with a disk jockey at the subject premises.

**VIOLATION CASE NUMBER CF-2023-107917, THE CEASE OPERATIONS ORDER,
AND SUBSEQUENT CEASE ORDER VIOLATION**

39. The Department inspected the subject premises in the early morning of October 14, 2023.

40. The Department discovered that the Defendants were holding and/or allowing a special event with a disk jockey at the subject premises without the required SAOL.

41. As a result, the Department determined that said premises was in violation of the Philadelphia Code of General Ordinances and, in accordance with the requirements of Philadelphia Code Sections 1-110 and A-502 *et seq.*, the Department sent an Initial Violation Notice and Order to Defendant EB4200, Defendant SG4200, and Defendant UVC, ordering the timely correction of the violations of the subject premises by these Defendants. *See* Exhibits “F-6 and “F-7”.

42. In addition, the Department issued a Cease Operations Order for the subject premises for “operating without a Special Assembly License”. *See* Exhibit “F-5”.

43. Pursuant to Section A-505.1 of the Administrative Code, the Department may issue a Cease Operations Order whenever an occupancy, use or other activity is being performed without

the required permits or certificates, or whenever any condition is observed which presents an immediate danger to life or property.

44. Pursuant to that Cease Operations Order, in the early morning of October 14, 2023, the Department vacated the subject premises and posted the Cease Operations Order on the outside of the premises.

45. To date, the Department's Cease Operations Order remains in effect at the subject premises.

46. On October 27, 2023, the Department informed Defendant UVC that it would not lift the Cease Operations Order until it complied outstanding violations at the subject premises related to the safe operation of the business at the premises. *See, e.g.*, Exhibits "A-1", "A-3", "A-4", "B-1", "B-2", "C-1", and "E-1".

47. Pursuant to Philadelphia Code section A-505.4, a "Cease Operations Order shall remain posted on the premises until removal by, or with the approval of, the code official upon compliance with its terms."

48. Pursuant to Philadelphia Code section A-505.8, no person "with knowledge of a Cease Operations Order shall" (3) "Permit any structure or land [. . .] to be occupied by the public until the Cease Operations Order has been lifted by the code official", nor (4) "Remove, damage, alter or deface any Cease Operations Order". Phila. Code §§ A-505.8(3), (4).

49. On or about November 8, 2023, the Cease Operations Order posters on the outside of the subject premises were removed without the Department's permission.

50. On November 10, 2023, the Department re-inspected the subject premises and discovered that premises was open to the public, that members of the public were within the

premises, and that the business within the premises was operating in violation of the Cease Operations Order which was still in effect.

51. The Department also observed a disk jockey booth on the first floor of the subject premises with power plugs and speakers ready to be plugged into disk jockey equipment.

52. The Department vacated the subject premises and re-posted its Cease Operations Order for the premises for “operating without a Special Assembly License”. *See* Exhibit “F-8”.

UNLAWFUL TOBACCO PRODUCT SALES AT THE SUBJECT PREMISES

53. Pursuant to Philadelphia Code section 9-631(2)(a), no person shall sell tobacco products in the City of Philadelphia “without a current Tobacco Retailer Permit” for each retail location at which tobacco products are to be sold.

54. At all times relevant to this action, Defendant UVC has not possessed a Tobacco Retailer Permit issued pursuant to Philadelphia Code section 9-631.

55. Therefore, no one may sell tobacco products at the subject premises pursuant to the Philadelphia Code.

56. On October 22, 2020, the Health Department inspected the subject premises and observed that Defendant UVC was unlawfully selling tobacco products and permitting hookah use in violation of the Philadelphia Code. *See* Exhibit “F-1” at 3, 4.

57. Subsequently, on or about October 22, 2020, the Health Department, in accordance with the requirements of Philadelphia Code Sections 1-110 and 6-502 *et seq.*, provided Defendant UVC with a copy of that date’s Food Facility Inspection Report, ordering the timely correction of the violations of the subject premises by this Defendant. *See* Exhibit “F-1”. The violations listed in Exhibit “F-1” are incorporated herein by reference as if fully set out at length.

58. This Food Facility Inspection Report explicitly ordered Defendant UVC to “immediately remove all tobacco products from the premises until approved by the Health Department.” *See* Exhibit “F-1” at 3, 4.

59. The Initial Notice of Violation informed Defendant UVC of its right to file an appeal from this notice to the Board of License and Inspection Review. *See* Exhibit “F-1” at 4.

60. Defendant UVC did not file an appeal to the Board of License and Inspection Review or the Boards Administration from the Food Facility Inspection Report attached as Exhibit “F-1”.

61. As Defendant UVC has not availed itself of the administrative remedies provided in the Philadelphia Home Rule Charter and Section 800 of the Administrative Code, sub-code of Title 4, The Building Construction and Occupancy Code, this Defendant is precluded from challenging this Food Facility Inspection Report or any of the violations or orders therein. *See Gans v. City of Phila.*, 403 A.2d 168, 171 (Pa. Cmwlth. 1979).

62. Despite being prohibited from selling tobacco products at the subject premises, and despite being ordered in 2020 to remove all tobacco products from the premises, on multiple occasions over the past two years, Defendant UVC has advertised hookah tobacco products for purchase at the subject premises.

63. Defendant UVC has advertised hookah tobacco products within advertisements for special events at the subject premises which were scheduled to occur after the October 14, 2023 Cease Operations Order was imposed.

64. On NOVEMBER 10, 2023, the Department re-inspected the subject premises and discovered hookahs inside customer-accessible areas of the premises.

**A PRELIMINARY INJUNCTION IS NECESSARY TO PREVENT DEFENDANTS'
CONTINUING UNLAWFUL ACTIVITIES**

65. Upon information and belief, to date, the subject premises continues to operate as an unlicensed nightclub in violation of the Philadelphia Code and to sell tobacco products without the required permit.

66. The Subject Premises has been used and continues to host multiple events with a large number of patrons, despite the Department's Cease Operations Order and despite uncorrected violations remaining at the premises.

67. The operation of the subject premises as an unlicensed nightclub which unlawfully sells tobacco without the required permit poses a danger to the health and safety of its occupants, the neighborhood, and the public at large.

68. The violations of the Philadelphia Code found at the subject premises constitute a nuisances *per se* and endanger the health, welfare, and safety of the public and neighboring community, and are an affront to the City of Philadelphia.

69. In addition, the sale of tobacco products without the required permit is a nuisance as a matter of law. Phila. Code § 9-631(2)(a).

INJUNCTIVE RELIEF

70. The City is entitled to injunctive relief because it can establish: (1) a clear right to relief; (2) immediate and irreparable harm in the absence of the injunction; (3) that greater injury will result by denying rather than by granting the injunction; (4) that the preliminary injunction will not adversely affect the public interest; (5) that the injunction would restore the status quo; and (6) that no adequate remedy at law exists and the injunction is appropriate to abate the alleged harm. *See Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mt., Inc.*, 828 A.2d 995, 1001 (Pa. 2003).

71. The City has a clear right to relief and is likely to prevail on the merits.

72. Clear and credible evidence has been presented that Defendants are violating multiple provisions of the Philadelphia Code, posing a danger to the public.

73. Moreover, the Defendants are barred from challenging the danger and impropriety of operating a nightclub at the subject premises without the required Special Assembly Occupancy License due to their failure to exhaust administrative remedies following the Board of Licenses and Inspection Review's October 10, 2023 decision in favor of revoking their License. *See* Exhibit "F-4"; *Gans*, 402 A.2d at 171.

74. The City and the public at large will suffer immediate and irreparable harm significantly greater than the Defendants if the Defendants are permitted to:

(a) Allow the subject premises to continue to operate as an unlawful, unlicensed nightclub holding special assembly occupancies in violation of the Philadelphia Code;

(b) Allow the unlawful sale of tobacco products without the required permit at the subject premises; and,

(c) Obstruct, prevent, interfere, and/or otherwise impede in any manner the Department and/or its contractors from vacating the subject premises pursuant to a lawfully issued Cease Operations Order.

75. Greater injury will result to the City and to the public than the Defendants if this injunction is not granted.

76. Granting this injunction undeniably serves to protect the public's interest and would not cause any adverse public impact.

77. Granting this injunction will restore both parties to their lawful status quo.

78. Granting this injunction prohibiting the operation of Defendants' unlawful nightclub; requiring the Defendants to bring the subject premises into compliance with the Philadelphia Code; permitting the Defendants to resume lawful operations *only after* removing materials, equipment, products, and other things that the Defendants have been using for unlawful purposes; and prohibiting the Defendants from resuming their unlawful conduct under penalty of contempt is reasonably suited to abate Defendant's violations of the Philadelphia Code and protect public health and safety.

WHEREFORE, for the foregoing reasons, the City respectfully requests that the Court grant the requested Preliminary Injunction in the above-captioned matter, and enter an Order for the following requested relief:

1. Until further order of this Court, the Department shall not lift its October 14, 2023 Cease Operations Order, unless and until:

- a. The Defendants have removed the disk jockey booth and all disk jockey equipment from the subject premises;
- b. The Defendants have removed all tobacco products from the subject premises;
- c. The Defendants have complied all Administrative Code, Fire Code, and Property Maintenance Code violations cited in NOVs nos. CF-2022-023147, CF-2023-011900, CF-2023-012667, and CF-2023-099211;
- d. The Department has reinspected the subject premises to confirm compliance of the above three (3) conditions; and,
- e. The Court has given its approval to modify this Injunction and Order.

2. While the October 14, 2023 Cease Operations Order remains in effect, the Department, with the assistance of the Philadelphia Police Department and/or Philadelphia Sheriff's Office and/or a locksmith, is authorized to:

a. Vacate the Subject Premises and remove any person from the premises who is not an Authorized Person pursuant to this Court's orders. If any such person refuses to vacate the subject premises, the Department is authorized to utilize the assistance of the Police Department and/or the Philadelphia Sheriff's Office to remove such person(s) from the premises, without the need for a writ of possession, and to use whatever reasonable force is necessary to remove any such person(s) from the premises.

b. Retain the services of a locksmith, if necessary, to gain entry to the subject premises to carry out the cease and vacation the premises, the costs of which may be entered as liens against the subject premises in favor of the City.

3. The Defendants shall not hold any special assembly occupancies at the subject premises without the required Special Assembly Occupancy License.

4. Until further order of this Court, the Defendants shall not allow any disk jockey equipment into the subject premises and shall not bring into or construct any disk jockey booth within the subject premises.

5. The Defendants shall not sell nor offer for sale any tobacco products at the subject premises without the required Tobacco Retailer Permit.

6. Until further order of this Court, the Defendants shall not allow any tobacco products at the subject premises, nor allow any person to bring tobacco products into the subject premises.

7. The Defendants shall obey the orders of this Court or else be found in contempt.
8. Any other equitable relief as the Court deems appropriate.

Respectfully Submitted:

KRISTIN BRAY
ACTING CITY SOLICITOR

JOANNA KLEIN
CHIEF DEPUTY CITY SOLICITOR

BY: /s/ Jeffrey Cohen
Jeffrey Cohen
Deputy City Solicitor

Date: November 20, 2023

Attorneys for Plaintiff, City of Philadelphia

VERIFICATION

PROPERTY ADDRESS: 4200 Chester Ave.

I, Sherelle Alford, do hereby verify and state that I am an agent for the Plaintiff City of Philadelphia's Department of Licenses and Inspections; that I am authorized to make this verification on behalf of the Plaintiff City; that I have reviewed the foregoing Petition; and that the facts set forth in this document are true and correct to the best of my knowledge, information, and belief. This verification is made pursuant to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.



Sherelle Alford, Manager of Litigation
Litigation Support Unit

Agent for Plaintiff
City of Philadelphia
Department of Licenses and Inspections

Date: 11/20/23

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

CITY OF PHILADELPHIA Plaintiff,	:	COURT OF COMMON PLEAS PHILADELPHIA COUNTY CIVIL TRIAL DIVISION
v.	:	
UVC INC., EB4200 LLC, and SG4200 LLC Defendants.	:	NOVEMBER TERM, 2023 NO. 02137

RULE

AND NOW, this _____ day of November _____ 2023,
upon consideration of Plaintiff City of Philadelphia’s Emergency Petition for a Preliminary Injunction, and any response thereto, a Rule is hereby granted upon the above-named Defendants, UVC Inc., EB4200 LLC, and SG4200 LLC, to show cause why the requested relief should be ordered.

IT IS ORDERED that the above Defendants show cause before this Court on the _____ day of _____, 2023, at _____ a.m./p.m., at City Hall, Courtroom 446, Philadelphia, Pennsylvania why a Preliminary Injunction providing the relief sought in the City’s Emergency Petition shall not be entered. Failure to attend the Court hearing may result in the Court issuing the City’s requested Preliminary Injunction or other appropriate orders against the Defendants.

BY THE COURT:

J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

CITY OF PHILADELPHIA	:	COURT OF COMMON PLEAS
Plaintiff,	:	PHILADELPHIA COUNTY
	:	CIVIL TRIAL DIVISION
v.	:	
	:	NOVEMBER TERM, 2023
UVC INC., EB4200 LLC, and SG4200 LLC	:	NO. 02137
Defendants.	:	

ORDER FOR PRELIMINARY INJUNCTION

AND NOW, this _____ day of _____, 2023, upon consideration of the Preliminary Injunction and Complaint filed by the Plaintiff, City of Philadelphia, any response thereto, and the hearing held thereupon, it is hereby **DETERMINED** that:

1. Plaintiff, City of Philadelphia (the “City”), is a municipal corporation of the first class of the Commonwealth of Pennsylvania under the Act of April 21, 1949, P.L. 665, § 1, *et seq.*
2. The Defendants EB4200 LLC and SG4200 LLC are the owners of record of and responsible parties for the premises located at 4200 Chester Avenue, Philadelphia, Pennsylvania (the “subject premises”) and are responsible for maintaining the subject premises in accordance with the Philadelphia Code.
3. The Defendant UVC Inc. is a commercial tenant at the subject premises, which operates a tavern at that premises and is responsible for operating lawfully at that premises in accordance with the Philadelphia Code.
4. On multiple occasions over the past two years, the Department has inspected the subject premises and determined that said premises was in violation of the Administrative Code (“A”), the Fire Code (“F”), and the Property Maintenance Code (“PM”) of the Philadelphia

Building Construction and Occupancy Code, Title 4 of the Philadelphia Code of General Ordinances.

5. The Department, on the following dates, issued Notices of Violations (“NOVs”) to the Defendants ordering the correction of Administrative Code, Fire Code, and Property Maintenance Code violations at the subject premises:

- a. NOV no. CF-2022-023147, issued on 3/22/2022 to Defendant UVC and on 7/19/2022 to Defendant EB4200 and Defendant SG4200;
- b. NOV no. CF-2023-011900, issued on 2/14/2023 to Defendant EB4200 and Defendant SG4200;
- c. NOV no. CF-2023-012667, issued on 2/16/2023 to Defendant EB4200 and Defendant SG4200; and,
- d. NOV no. CF-2023-099211, issued on 9/26/2023 to Defendant EB4200.

6. To date, the Administrative Code, Fire Code, and Property Maintenance Code violations cited in the four (4) NOVs above have not been fully corrected.

7. Pursuant to Philadelphia Code section 9-703(1)(a)-(b), a special assembly occupancy is defined as a type of establishment, including a nightclub, discotheque, cabaret, tavern, bar, or restaurant, which provides social entertainment (hereinafter, “special events” or “special assembly occupancies”) for 50 or more people at least once a year, including but not limited to dancing, entertainment by live or recorded music, and/or disk jockeys.

8. Pursuant to Philadelphia Code section 9-703(2)(a), no person shall operate a special assembly occupancy (which holds special events) “without first obtaining a special assembly occupancy license” (hereinafter, an “SAOL”) from the Department.

9. The Defendants do not possess an active SAOL for the subject premises.

10. Therefore, the Defendants are prohibited from holding special assembly occupancies at the subject premises without the required SAOL.

11. On October 14, 2023, the City Department of Licenses and Inspections (the “Department”) inspected the subject premises and found a special event with a disk jockey in progress at the subject premises without the required SAOL.

12. As a result, on October 14, 2023, the Department issued a Cease Operations Order for the subject premises, vacated the premises, and posted the Cease Operations Order on the outside of the premises.

13. On or about NOVEMBER 8, 2023, the Cease Operations Order posters on the outside of the subject premises were removed without the Department’s permission.

14. On NOVEMBER 10, 2023, the Department re-inspected the subject premises and discovered that premises was open to the public, that members of the public were within the premises, and that the business within the premises was operating in violation of the Cease Operations Order.

15. The Department also observed a disk jockey booth on the first floor of the subject premises with power plugs and speakers ready to be plugged into disk jockey equipment.

16. Pursuant to Philadelphia Code section 9-631(2)(a), no person shall sell tobacco products in the City of Philadelphia “without a current Tobacco Retailer Permit” for each retail location at which tobacco products are to be sold.

17. The Defendants do not possess a Tobacco Retailer Permit issued pursuant to Philadelphia Code section 9-631.

18. Therefore, the Defendants are prohibited from selling tobacco products at the subject premises without the required Tobacco Retailer Permit.

19. On OCTOBER 22, 2020, the Health Department inspected the subject premises, observed that Defendant UVC was unlawfully selling tobacco products and permitting hookah use in violation of the Philadelphia Code, and ordered this Defendant to immediately remove all tobacco products from the premises.

20. Subsequently, on or about OCTOBER 22, 2020, the Health Department provided Defendant UVC with a copy of that date's Food Facility Inspection Report, containing the findings and order in the paragraph above.

21. Defendant UVC did not file an appeal from this Food Facility Inspection Report to the Boards Administration, thus the findings and orders contained therein are deemed admitted due to the failure to exhaust administrative remedies.

22. On NOVEMBER 10, 2023, the Department re-inspected the subject premises and discovered hookahs inside customer-accessible areas of the premises.

23. Clear and credible evidence has been presented that the Defendants' activities are violating multiple provisions of the Philadelphia Code.

24. This Court finds that these violations pose a public safety risk.

25. The City has a clear right to injunctive relief and is likely to prevail on the merits.

It is therefore **ORDERED**, **ADJUDGED** and **DECREED** as follows:

26. Until further order of this Court, the Department shall not lift its October 14, 2023 Cease Operations Order, unless and until:

- a. The Defendants have removed the disk jockey booth and all disk jockey equipment from the subject premises;

b. The Defendants have removed all tobacco products from the subject premises;

c. The Defendants have complied all Administrative Code, Fire Code, and Property Maintenance Code violations cited in NOVs nos. CF-2022-023147, CF-2023-011900, CF-2023-012667, and CF-2023-099211;

d. The Department has reinspected the subject premises to confirm compliance of the above three (3) conditions; and,

e. The Court has given its approval to modify this Injunction and Order.

27. While the October 14, 2023 Cease Operations Order remains in effect, the Department, with the assistance of the Philadelphia Police Department and/or Philadelphia Sheriff's Office and/or a locksmith, is authorized to:

a. Vacate the Subject Premises and remove any person from the premises who is not an Authorized Person pursuant to this Court's orders. If any such person refuses to vacate the subject premises, the Department is authorized to utilize the assistance of the Police Department and/or the Philadelphia Sheriff's Office to remove such person(s) from the premises, without the need for a writ of possession, and to use whatever reasonable force is necessary to remove any such person(s) from the premises.

b. Retain the services of a locksmith, if necessary, to gain entry to the subject premises to carry out the cease and vacation the premises, the costs of which may be entered as liens against the subject premises in favor of the City.

25. The Defendants shall not hold any special assembly occupancies at the subject premises without the required Special Assembly Occupancy License.

26. Until further order of this Court, the Defendants shall not allow any disk jockey equipment into the subject premises and shall not bring into or construct any disk jockey booth within the subject premises.

27. The Defendants shall not sell nor offer for sale any tobacco products at the subject premises without the required Tobacco Retailer Permit.

28. Until further order of this Court, the Defendants shall not allow any tobacco products at the subject premises, nor allow any person to bring tobacco products into the subject premises.

29. The terms of this Order shall be binding upon the Defendants, and any agents, lessees, heirs, assigns, successors in interest, and all persons acting in or for their behalf or occupying the subject premises.

30. This Order shall remain in full force and effect until this Court specifically orders otherwise.

31. The Defendants shall obey the orders of this Court or else be found in contempt.

a. The Court shall consider instances of contempt to be separate if they occur on different days, if they involve different types of conduct, if they involve different locations, portions, or rooms within the subject premises, or if they involve different parts, fixtures, accessories, or physical characteristics of the subject premises.

b. If a violation of this Court's orders continues for more than one day, each day shall be considered a separate instance of contempt.

c. Any fines for contempt issued against the Defendants shall be separate from, and in addition to, any statutory fines imposed for the violations of the Philadelphia Code set forth in the City's complaint in the above-captioned matter.

32. A status hearing shall be held on this Petition on the _____ day of _____, 2023, at _____ a.m./p.m., at City Hall, Courtroom 446 _____, Philadelphia, Pennsylvania. Failure to attend the Court hearing may result in the Court issuing further injunctive relief and/or other appropriate orders against the Defendants.

BY THE COURT:

J.

**CITY OF PHILADELPHIA, LAW DEPARTMENT
KRISTIN K. BRAY, ACTING CITY SOLICITOR**

By: Jeffrey Cohen, Deputy City Solicitor
Attorney Identification No. 318670
1515 Arch St., 15th Floor
Philadelphia, PA 19102
(215) 683-5412; Jeffrey.Cohen@phila.gov

CITY OF PHILADELPHIA	:	COURT OF COMMON PLEAS
Plaintiff,	:	PHILADELPHIA COUNTY
	:	CIVIL TRIAL DIVISION
v.	:	
	:	NOVEMBER TERM, 2023
UVC INC., EB4200 LLC, and SG4200 LLC	:	NO. 02137
Defendants.	:	

CERTIFICATE OF SERVICE

I, Jeffrey Cohen, hereby certify that on this date, I or my staff caused a true and correct copies of the foregoing Plaintiff's Emergency Petition for Preliminary Injunction and Rule to Show Cause why the Petition should not be granted to be served upon the following via the Court's E-Filing System, as well as by personal service and/or certified mail to:

UVC Inc.
4200-02 Chester Avenue
Philadelphia, PA 19104

UVC Inc., c/o Pres. Jack Gillespie
38 Osprey Way
Elkton, MD 21921

EB4200 LLC
4200-02 Chester Avenue
Philadelphia, PA 19104

EB4200 LLC c/o Member Edward Brown
2228 Hilltop View Road
Unionville, PA 19320

SG4200 LLC
4200-02 Chester Avenue
Philadelphia, PA 19104

SG4200 LLC c/o Member Susan Garber
2228 Hilltop View Road
Unionville, PA 19320

BY: /s/ Jeffrey Cohen

Jeffrey Cohen
Deputy City Solicitor
Attorney for Plaintiff, City of Philadelphia

Date: November 20, 2023

CITY OF PHILADELPHIA, LAW DEPARTMENT
KRISTIN K. BRAY, ACTING CITY SOLICITOR

By: Jeffrey Cohen, Deputy City Solicitor
Attorney Identification No. 318670
1515 Arch St., 15th Floor
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CITY OF PHILADELPHIA	:	COURT OF COMMON PLEAS
Plaintiff,	:	PHILADELPHIA COUNTY
	:	CIVIL TRIAL DIVISION
v.	:	
	:	
UVC INC.	:	NOVEMBER TERM, 2023
4200-02 CHESTER AVENUE	:	
PHILADELPHIA, PA 19104	:	NO. 02137
and	:	
UVC INC. C/O PRES. JACK GILLESPIE	:	
38 OSPREY WAY	:	
ELKTON, MD 21921	:	
and	:	
	:	
EB4200 LLC	:	
4200-02 CHESTER AVENUE	:	
PHILADELPHIA, PA 19104	:	
and	:	
EB4200 LLC C/O MEMBER EDWARD BROWN	:	
2228 HILLTOP VIEW ROAD	:	
UNIONVILLE, PA 19320	:	
and	:	
	:	
SG4200 LLC	:	
4200-02 CHESTER AVENUE	:	
PHILADELPHIA, PA 19104	:	
and	:	
SG4200 LLC C/O MEMBER SUSAN GARBER	:	
2228 HILLTOP VIEW ROAD	:	
UNIONVILLE, PA 19320	:	
Defendants.	:	

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF
EMERGENCY PETITION FOR PRELIMINARY INJUNCTION
(Continued on next page)

Plaintiff, the City of Philadelphia (“City”), by and through their undersigned counsel, file this Memorandum of Law in support of their Emergency Petition for Preliminary Injunction.

I. MATTER BEFORE THE COURT

The City requests that the Court grant its Emergency Petition for Preliminary Injunction seeking to enforce the existing Cease Operations Order at the premises located at 4200 Chester Avenue, Philadelphia, Pennsylvania (“Subject Premises”), until the Defendants comply with the Philadelphia Code by ceasing to hold special assembly occupancies and to sell tobacco products without the required license and permit to do so, and to order and ensure the Defendants’ compliance with the Code going forward.

II. QUESTION PRESENTED

Question 1: Whether the City is entitled to a preliminary injunction prohibiting the Defendants from operating an unlawful nightclub which is in violation of the Philadelphia Code, from holding special assembly occupancies without a license, and from selling tobacco products without a permit, where the City meets all six of the prerequisites warranting a preliminary injunction: the City has a clear right to prohibit and to cease such unlawful operations; such operations present an immediate and irreparable harm to the community, the public, and the patrons and employees of the Defendants’ club; greater harm has resulted and will continue to result if such unlawful operations are permitted to continue; prohibiting and ceasing such unlawful operations is in the public’s interest; requiring compliance with the law would restore the subject premises and the parties to the status quo; and monetary relief is inadequate?

Suggested Answer: Yes.

III. FACTS

The Defendants are corporate entities registered with the Commonwealth of Pennsylvania Department of State. Defendants EB4200 LLC (hereinafter, “Defendant EB4200”) and SG4200 LLC (hereinafter, “Defendant SG4200”) are the owners of 4200 Chester Avenue and 4202 Chester Avenue, Philadelphia, Pennsylvania (collectively, the “subject premises”). Defendant UVC Inc. (hereinafter, “Defendant UVC”) is the operator of the business at the subject premises. The business at the subject premises is a nightclub that has been called Mill Creek Tavern, Crown Lounge, Deuces Lounge, and Deuces Philly. The subject premises is in a residential neighborhood in the University City neighborhood of Southwest Philadelphia. The subject premises is within 500 feet of a K-12 school which sits across Chester Avenue. The subject premises is one block east of Clark Park, which has fields, playgrounds, and walking paths open to the public, and the premises is one block west of the Woodlands, a national historic site open to the public which contains an arboretum, community garden, and cemetery. The Defendants collectively are responsible for ensuring that business operations at the subject premises comply with the Philadelphia Code, and to correct any violations of the Code caused by such operations.

At all times relevant to this action, Defendant UVC has not possessed a Tobacco Retailer Permit required to sell tobacco products within the City of Philadelphia. On October 22, 2020, the City Department of Public Health (the “Health Department”) inspected the subject premises and found that Defendant UVC was unlawfully selling tobacco products and permitting hookah use without the required Tobacco Retailer Permit. *See* Exhibit “F-1”. Defendant UVC was issued and given a Food Facility Inspection Report ordering it to remove all tobacco products from the subject

premises. *See* Exhibit “F-1” at 3, 4. Defendant UVC did not appeal this Report to the Board of Licenses and Inspections Review (“BLIR”).

Over the past two years, the City Department of Licenses and Inspections (the “Department”) has inspected the subject premises and found numerous violations of the Philadelphia Code related to the premises’ business operations and/or the safety of the patrons and employees involved in those operations. The Department served Notices of Violations (“NOVs”) to the Defendants ordering the correction of these violations. *See* Exhibits “A-1”, “A-3”, “A-4”, “B-1”, “B-2”, “C-1”, “D”, “E-1”, “F-6”, and “F-7”. None of these NOVs were appealed to the Boards Administration. Some of these violations are repeated violations (e.g., flammable curtains obstructing fire egress, *see* Exhibits “A-1”, “A-3”, “A-4”, “B-1”, and “B-2”), some of these violations have been complied to date, and some of these violations remain uncomplied to date.

A Special Assembly Occupancy License (“SAOL”) is required to provide social entertainment (hereinafter, “special events” or “special assembly occupancies”) to 50 or more people, including dancing, entertainment by live or recorded music, and/or disk jockeys. Phila. Code § 9-703(1)(a)-(b). Defendant UVC previously possessed an SAOL for the subject premises; however, over the past several years, this Defendant’s nightclub operations had caused several instances of disturbances, fights, assaults, reports of persons with a gun, litter, noise, parking violations, and repeated violations of operating outside of lawful operating hours. Because of these incidents, the City determined that the subject premises was not a “safe and proper place for the purposes of special assembly occupancy”, and on October 21, 2022, the Department issued and sent Defendant UVC a Notice that it was revoking the SAOL for the subject premises (the “Notice of Revocation”). *See* Exhibit “F-2”, Phila. Code § 9-703(2)(b)(.4)(c).

On October 28, 2022, David Joseph, a manager employed by Defendant UVC, filed an appeal from the Notice of Revocation to BLIR, which was given BLIR Appeal no. HA-2022-004420. *See* Exhibit “F-3”. A hearing on this BLIR Appeal was ultimately scheduled for October 10, 2023. Between October 28, 2022 and October 10, 2022, as Defendant UVC continued its nightclub operations at the subject premises, several more instances of disturbances, fights, assaults, reports of persons with a gun, litter, noise, parking violations, and repeated violations involving operating outside of lawful operating hours occurred. On October 9, 2023, Defendant UVC emailed BLIR to withdraw its appeal. On October 10, 2023, BLIR issued a Notice of Decision that Appeal no. HA-2022-004420 was “City Affirmed” for both a failure to prosecute and for David Joseph’s lack of standing to appeal on behalf of Defendant UVC. *See* Exhibit “F-4”.

Despite knowing that its SAOL was revoked, Defendant UVC advertised a special event to occur at the subject premises on October 13, 2023. These advertisements also stated that hookah tobacco products would be available for purchase. On October 13, 2023, Defendant UVC held a special event with a disk jockey at the subject premises which ran into the early morning of October 14, 2023. The Department inspected the subject premises in the early morning and discovered that Defendant UVC was unlawfully holding a special event without the required SAOL. The Department subsequently issued a Cease Operations Order, vacated the premises pursuant to that Order, and posted a copy of the Order on the outside of the premises. *See* Exhibit “F-5”. This Cease Operations Order remains in effect to date. On October 27, 2023, the Department informed Defendant UVC that it would not lift the Cease Operations Order until the Defendant complied outstanding violations related to the safe operation of the business at the subject premises.

On or about November 8, 2023, the Cease Operations Order posters were removed from the outside of the subject premises. On November 10, 2023, the Department returned to the subject premises to find that it was open to the public, that members of the public were inside, and that the business was operating at the premises in violation of the Cease Operations Order. The Department also observed a disk jockey booth inside the subject premises ready to be plugged into disk jockey equipment, despite Defendant UVC's lack of the required SAOL. The Department also observed hookahs inside customer-accessible areas of the subject premises, despite Defendant UVC's lack of the required Tobacco Retailer Permit. The Department once again vacated the premises pursuant to the Cease Operations Order and posted a new copy of the Order on the outside of the premises. *See* Exhibit "F-8". To date, the Defendants have yet to comply all outstanding violations related to the safe operation of the business at the subject premises, the Defendants do not have an SAOL for the premises, and the Defendants do not have a Tobacco Retailer Permit for the premises. Such violations constitute a nuisance *per se* and endanger the health, welfare, and safety of the public and neighboring community, and are an affront to the City of Philadelphia.

IV. LEGAL STANDARD

To obtain the preliminary injunction, the City must establish all six essential prerequisites: (1) a clear right to relief; (2) immediate and irreparable harm in the absence of the injunction; (3) that greater injury will result by denying rather than by granting the injunction; (4) that the preliminary injunction will not adversely affect the public interest; (5) that the injunction would restore the status quo; and (6) that no adequate remedy at law exists and the injunction is appropriate to abate the alleged harm. *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mt., Inc.*, 828 A.2d 995, 1001 (Pa. 2003). The burden of proof for all six factors rests squarely with the Plaintiff. *Id.*

V. ARGUMENT

As discussed below, all six factors are easily and obviously met.

1. The City has a Clear Right to Relief Because of Clear and Credible Evidence that Defendants have Violated the Philadelphia Code.

A party seeking an injunction must show “that the activity it seeks to restrain is actionable, that its right to relief is clear, and that the wrong is manifest, or, in other words, must show that it is likely to prevail on the merits.” *Summit Towne Ctr.*, 828 A.2d at 1001 (citations omitted). The City’s right to relief is statutory and the facts supporting such relief are obvious.

Philadelphia Code section 9-703(2)(a) prohibits a business from holding special events without an SAOL. The Department shall not issue or renew an SAOL if the location is not “a safe and proper place for the purposes of special assembly occupancy” if an inspection finds safety hazards “relating to electrical wiring, lawful occupancy, fire safety and emergency exits” and considering the factors of “crime, traffic, litter, noise, parking, and hours of operation”. Phila. Code § 9-703(2)(b)(.4)(a), (.c). In the instant case, the City has determined that the outstanding violations related to the safe operation of the business at the subject premises and the instances of disturbances, fights, assaults, reports of persons with a gun, litter, noise, parking violations, and repeated violations of operating outside of lawful operating hours render the premises an unsafe and improper place for the purposes of special assembly occupancy.

Section A-505.1(1) of the Administrative Code of the City of Philadelphia (Subcode “A”) of Title 4 of the Philadelphia Code of General Ordinances authorizes the City “to issue Cease Operations Orders directing that use and other activities cease immediately and that the premises be vacated pending compliance with such orders whenever”:

“Any occupancy, use or other activity is being performed in or on any building, structure or land, or any part thereof, without required Zoning and/or Use Registration permits, Certificate of Occupancy or other permits”; or

“Any condition is observed which presents an immediate danger to life or property, including any danger to life or property of adjoining or abutting structures.”

Phila. Code § A-505.1(1), (4). Because the Defendants knowingly held a special event on October 13, 2023 at the subject premises without the required SAOL, the Department issued a Cease Operations Order. Because the Defendants knowingly held *another* special event on November 10, 2023, violating the Philadelphia Code both because they lacked the required SAOL *and* because they violated a posted Cease Operations Order, the City has established a clear right to relief on the merits.

Separately from the SAOL violation, Philadelphia Code section 9-631(2)(a) prohibits the sale of tobacco products without a current Tobacco Retailer Permit for that retail location. Philadelphia Code section 6-103 authorizes the Health Department to issue their own Cease Operations Orders for violations of Title 6 of the Philadelphia Code of General Ordinances (hereinafter, the “Health Code”) and Code section 6-502(1) authorizes the Health Department to issue orders requiring action or forbearance from action where required by the Health Code or the regulations adopted thereunder.

The Health Department discovered unlawful tobacco sales in violation of this Code section in 2020, and Defendant UVC was ordered to remove all tobacco products from the subject premises. *See* Exhibit “F-1”. Subsequently, Defendant UVC has *continued* to advertise the sale of tobacco products at the subject premises and the City has observed hookahs in customer-accessible areas of the premises. Because the Defendants are knowingly violating the *separate* Philadelphia Code provisions regulating the sale of tobacco products, the City has established a clear and separate right to relief on the merits.

Activity subject to a preliminary injunction is “actionable if it constitutes breach of a duty imposed by statute or by common law.” *Maritrans GP Inc. v. Pepper, Hamilton & Scheetz*, 602 A.2d 1277, 1283 (Pa. 1992). Here, the Defendants’ conduct has breached the Philadelphia Code provisions cited above: they have continued to operate the subject premises as an unlawful nightclub holding special events, they have done so in a manner that is not safe and proper for that location, such operations endanger persons and property both within the premises and to its neighborhood, and they have engaged in the unpermitted sale of tobacco products. The Defendants have knowingly violated the City’s Cease Operations Order and have failed to correct all of the violations at the subject premises which relate to the safe operation of a lawful business there.

Moreover, the City is clearly entitled to relief as the Defendants have not availed themselves of the administrative remedies provided in the Philadelphia Home Rule Charter and Section 800 of the Administrative Code, sub-code of Title 4, the Building Construction and Occupancy Code. Multiple notices were provided to the Defendants for all violations referenced above, including but not limited to the notices specifically ordering them not to sell tobacco products or to hold special events at the subject premises, and the Defendants failed to pursue any administrative remedy from these notices. As such, the Defendants are now precluded from making such challenges before the Court. *Gans v. City of Phila.*, 403 A.2d 168, 171 (Pa. Cmwlth. 1979).

As the City is clearly entitled to relief, the first prong of the preliminary injunctive standard is met.

2. *Immediate and Irreparable Harm will Result if the Preliminary Injunction is Not Granted.*

A preliminary injunction may only be imposed when it is necessary to prevent “immediate and irreparable harm” to the plaintiff, and where the plaintiff has no adequate remedy at law.

Summit Town Centre, Inc., 828 A.2d at 1001. This is one of the two most important factors in the preliminary injunction analysis. *New Castle Orthopedic Assocs. v. Burns*, 392 A.2d 1383, 1385 (Pa. 1978). This is also one of the immediate and pressing reasons to cease the Defendants' unlawful operations.

The outstanding violations related to the safe operation of the business at the subject premises and the instances of disturbances, fights, assaults, reports of persons with a gun, litter, noise, parking violations, and repeated violations of operating outside of lawful operating hours render the premises an unsafe and improper place for the purposes of special assembly occupancy. Moreover, because they have failed to exhaust their administrative remedies from the notices they were provided, the Defendants cannot challenge the fact of the harm their special assembly occupancy operations and unpermitted tobacco sales have caused and will cause (if allowed to continue). *Gans*, 403 A.2d at 171; *see* Exhibits "A-1", "A-3", "A-4", "B-1", "B-2", "C-1", "D", "E-1", "F-1", and "F-2". The specific harms posed by the Defendants' unlawful operation include, but are not limited to, instances of violence, repeated obstruction of fire exits, the failure to test and certify fire safety systems, the failure to test and certify the fire escape, and the unpermitted sale of a product known to be carcinogenic. *See* Exhibits "A-1", "A-3", "A-4", "B-2", "B-2", "C-1", "D", "F-1", "F-2", "F-6", and "F-7". The potential victims of such harms include the Defendants' patrons and employees, as well as the families and children attending the K-12 school across the street or playing in the parks to the east and west of the premises.

Such unlawful operations pose immediate dangers to the public at large; to the neighborhood surrounding the subject premises; and to the Defendants' patrons and employees. The substantial risk of immediate and irreparable harm—such as a fire or a shooting in the Defendants' nightclub—is obvious. There is no legal remedy that can bring a person back to life.

The multiple violations cited by the Department also pose obvious, serious, and immediate health and safety risks to the occupants, surrounding neighborhood, and public at large. Therefore, the second prong of the preliminary injunctive standard is met.

3. *Greater Injury Will Result by Denying the Injunction, and Such Injunction Will Not Adversely Affect the Public Interest*

Likewise, for the reasons demonstrated above, the City easily satisfies the third and fourth prongs necessary for a preliminary injunction. Both prongs look at the balance of the equities and the public interest, and both weigh heavily in the City's favor. Granting the injunction is in the public interest because it would protect the public from multiple safety hazards present in the subject premises and from the risk of violence due to the Defendants' unlawful special assembly occupancy operations. Denying the injunction would allow these hazards and risks to continue, and the Defendants have shown from their past behavior that they intend to continue these hazardous and risky operations *despite* lacking the required licenses and permits to do so. Thus, the public interest will unquestioningly be better served, and the harms better balanced, by granting the injunction rather than denying it. Therefore, the third and fourth prongs of the preliminary injunctive standard are met.

4. *Plaintiff's Requested Injunction Would Not Disrupt the Status Quo.*

"The status quo which will be preserved by preliminary injunction is the last actual, peaceable (and, we may add, lawful) noncontested status which preceded the pending controversy." *Com. v. Coward*, 414 A.2d 91, 99 (Pa. 1980) (internal citations omitted). Here, the last lawful status quo for the subject premises was, as of October 10, 2023, *solely* as a bar or restaurant that is not permitted to sell tobacco products and is not licensed to hold special events. Three days later, on October 13, 2023, the Defendants unlawfully held a special event knowing they did not possess the SAOL required to do so. On November 10, 2023, the Defendants also

knowingly defied the October 14, 2023 Cease Operations Order, also clearly preparing to sell tobacco products knowing they did not possess the Tobacco Retailer Permit required to do so. The Defendants' continued defiance of the law, as well as the hazards and risks associated with this defiance, are extremely disruptive to the lawful status quo.

Granting the preliminary injunction will revert the subject premises back to the peaceful, lawful, and safe status quo by forcing the Defendants to guarantee that their business operations will be lawful, that they will not be capable of holding special events or unlawfully selling tobacco products, and that the hazards and risks associated with those unlawful activities are abated. Therefore, the fifth prong of the preliminary injunctive standard is met.

5. No Other Adequate Remedy at Law Exists and the Injunction Is Appropriate To Abate The Alleged Harm.

An injunction ordering the Defendants to comply with the law in order to lift the Cease Operations Order at the subject premises, and to require them to comply with the law going forward under penalty of contempt, will abate the harms caused by such unlawful activities. The Defendants have shown, by ignoring the law and the Department's October 14, 2023 Cease Operations Order, that only this preliminary injunction (and the authority of the Court underlying it) will stop their misbehavior. The Department has already exercised its powers outside of seeking this injunction, yet the Defendants' unlawful operations have continued. The threat of monetary penalties has not persuaded the Defendants to correct these violations or cease their unlawful operations, which pose risks of fire hazards and of violence. Additionally, no amount of money can resurrect a person who has died as a consequence of the Defendants' unlawful operations. Thus, no other adequate remedy at law exists.

The City's requested preliminary injunction would directly address these harms and risks, require and ensure that the Defendants operate lawfully at the subject premises or face contempt,

would prevent injury and loss of life, and would ensure compliance with the Philadelphia Code. Therefore, the sixth prong of the preliminary injunctive standard is met. Accordingly, the Court should grant the City's requested preliminary injunction.

VI. CONCLUSION:

WHEREFORE, for the foregoing reasons, the City respectfully requests that the Court grant the requested preliminary injunction against the Defendants.

Respectfully Submitted:

KRISTIN BRAY
ACTING CITY SOLICITOR

JOANNA KLEIN
CHIEF DEPUTY CITY SOLICITOR

BY: /s/ Jeffrey Cohen
Jeffrey Cohen
Deputy City Solicitor

Attorneys for Plaintiff, City of Philadelphia

Court of Common Pleas of Philadelphia County
 Trial Division
Civil Cover Sheet

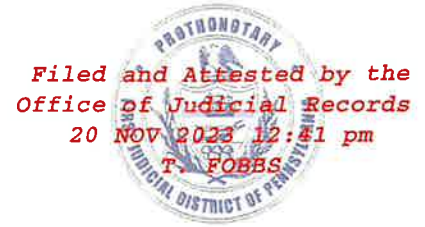
For Prothonotary Use Only (Docket Number)
NOVEMBER 2023
 E-Filing Number: 2311042683 **02137**

PLAINTIFF'S NAME CITY OF PHILADELPHIA		DEFENDANT'S NAME UVC INC	
PLAINTIFF'S ADDRESS C/O LAW DEPARTMENT 1515 ARCH ST, 14TH FLOOR PHILADELPHIA PA 19107		DEFENDANT'S ADDRESS 4200-02 CHESTER AVENUE PHILADELPHIA PA 19104	
PLAINTIFF'S NAME		DEFENDANT'S NAME UVC INC.	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 38 OSPREY WAY ELKTON MD 21921	
PLAINTIFF'S NAME		DEFENDANT'S NAME EB4200 LLC	
PLAINTIFF'S ADDRESS		DEFENDANT'S ADDRESS 4200-02 CHESTNUT AVENUE PHILADELPHIA PA 19104	
TOTAL NUMBER OF PLAINTIFFS 1	TOTAL NUMBER OF DEFENDANTS 6	COMMENCEMENT OF ACTION <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions	
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input type="checkbox"/> Mass Tort <input type="checkbox"/> Commerce <input type="checkbox"/> Settlement <input type="checkbox"/> Jury <input type="checkbox"/> Savings Action <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Minors <input type="checkbox"/> Non-Jury <input type="checkbox"/> Petition <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> W/D/Survival <input checked="" type="checkbox"/> Other: CODE ENFORCEMENT-CITY OF PHILA		
CASE TYPE AND CODE E3 - EQUITY - NO REAL ESTATE (TRO)			
STATUTORY BASIS FOR CAUSE OF ACTION			
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)		IS CASE SUBJECT TO COORDINATION ORDER? YES NO	
		FILED PRO PROTHY NOV 20 2023 T. FOBBS	
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>CITY OF PHILADELPHIA</u> Papers may be served at the address set forth below.			
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY JEFFREY D. COHEN		ADDRESS 1515 ARCH ST. 15TH FLOOR PHILADELPHIA PA 19102	
PHONE NUMBER (215) 683-5110	FAX NUMBER (215) 683-5299		
SUPREME COURT IDENTIFICATION NO. 318670	E-MAIL ADDRESS LawCodeEnforce@phila.gov		
SIGNATURE OF FILING ATTORNEY OR PARTY JEFFREY COHEN		DATE SUBMITTED Monday, November 20, 2023, 12:41 pm	

COMPLETE LIST OF DEFENDANTS:

1. UVC INC
4200-02 CHESTER AVENUE
PHILADELPHIA PA 19104
2. UVC INC.
38 OSPREY WAY
ELKTON MD 21921
3. EB4200 LLC
4200-02 CHESTNUT AVENUE
PHILADELPHIA PA 19104
4. EB4200 LLC C/O MEMBER EDWARD BROWN
2228 HILLTOP VIEW ROAD
UNIONVILLE PA 19320
5. SG4200 LLC
4200-02 CHESTER AVENUE
PHILADELPHIA PA 19104
6. SG4200 LLC C/O MEMBER SUSAN GARBER
2228 HILLTOP VIEW ROAD
UNIONVILLE PA 19320

CITY OF PHILADELPHIA, LAW DEPARTMENT
By: JEFFREY COHEN, Deputy City Solicitor
Attorney Identification No. 318670
1515 Arch Street - 15th Floor
Philadelphia, PA 19102-1595
(215) 683-5412; Jeffrey.Cohen@phila.gov



CITY OF PHILADELPHIA,
Plaintiff,

v.

UVC INC.
4200-02 CHESTER AVENUE
PHILADELPHIA, PA 19104
and
UVC INC. C/O PRES. JACK GILLESPIE
38 OSPREY WAY
ELKTON, MD 21921

and

EB4200 LLC
4200-02 CHESTER AVENUE
PHILADELPHIA, PA 19104
and
EB4200 LLC C/O MEMBER EDWARD BROWN
2228 HILLTOP VIEW ROAD
UNIONVILLE, PA 19320

and

SG4200 LLC
4200-02 CHESTER AVENUE
PHILADELPHIA, PA 19104
and
SG4200 LLC C/O MEMBER SUSAN GARBER
2228 HILLTOP VIEW ROAD
UNIONVILLE, PA 19320

Defendants.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION

TERM, 2023

NO.

NOTICE TO DEFEND

(Continued on next page)

Case ID: 231102137
Control No.: 23114503

You have been sued in court, if you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you in the court without further notice for any money claimed in the complaint or for any other claim or relief requested by plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

**PHILADELPHIA BAR ASSOCIATION
LAWYER REFERRAL and INFORMATION
SERVICE
ONE READING CENTER
PHILADELPHIA, PA 19107
(215) 238-6333**

“Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días, de plaza al partir del fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas la provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

**SERVICIO DE REFERENCIA E LEGAL
ONE READING CENTER
FILADELFIA, PA 19107 (215) 238-6333**

CITY OF PHILADELPHIA, LAW DEPARTMENT
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CITY OF PHILADELPHIA,
Plaintiff,

v.

UVC INC.
4200-02 CHESTER AVENUE
PHILADELPHIA, PA 19104
and
UVC INC. C/O PRES. JACK GILLESPIE
38 OSPREY WAY
ELKTON, MD 21921

and

EB4200 LLC
4200-02 CHESTER AVENUE
PHILADELPHIA, PA 19104
and
EB4200 LLC C/O MEMBER EDWARD BROWN
2228 HILLTOP VIEW ROAD
UNIONVILLE, PA 19320

and

SG4200 LLC
4200-02 CHESTER AVENUE
PHILADELPHIA, PA 19104
and
SG4200 LLC C/O MEMBER SUSAN GARBER
2228 HILLTOP VIEW ROAD
UNIONVILLE, PA 19320

Defendants.

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION

TERM, 2023

NO.

COMPLAINT

Plaintiff, City of Philadelphia (the "City"), by its undersigned counsel, respectfully
applies to this Court for an Order:

Case ID: 231102137
Control No.: 23114503

- (a) compelling the above-named Defendants to correct all violations of the Philadelphia Code at the premises located at 4200-02 Chester Avenue, Philadelphia Pennsylvania (the “subject premises”) of which notice has been given;
- (b) compelling the Defendants to cease and vacate the subject premises unless and until it is brought into compliance with the Philadelphia Code;
- (c) authorizing the Department of Licenses and Inspections (the “Department”) to secure and seal the subject premises if required to ensure that the Defendants cease their unlawful activities;
- (d) enjoining the Defendants from conducting or operating the subject premises as a nightclub, hookah lounge, or music club without a license to do so, from selling tobacco products without a permit to do so, and/or for any unlawful purpose;
- (e) compelling the Defendants to take steps to ensure that no unauthorized special assembly occupancies occur within the subject premises and no tobacco products are sold within the premises does not occur;
- (f) declaring the unlicensed nightclub at the subject premises a public nuisance;
- (g) abating that nuisance by permanently ceasing the nuisance activity; and
- (h) imposing statutory fines and reinspection fees as are authorized under the Philadelphia Code.

In support of the City’s request, the City represents that:

1. Plaintiff, City of Philadelphia, is a municipal corporation of the first class of the Commonwealth of Pennsylvania under the Act of April 21, 1949, P.L. 665, §1, *et seq.*

2. The properties at issue are 4200 Chester Avenue and 4202 Chester Avenue, Philadelphia, Pennsylvania; the City's Office of Property Assessment ("OPA") Account nos. are 871299720 and 871286300 (collectively, the "subject premises").

3. The subject premises is a large 5,000 square foot corner property located in the University City neighborhood of southwest Philadelphia.

4. The subject premises sits across the street from the Jubilee School at 4211 Chester Avenue, Philadelphia, Pennsylvania.

5. The subject premises is one block east of Clark Park, which contains fields, playgrounds, and walking paths open to the public.

6. The subject premises is one block west of the Woodlands, a national historic site open to the public that contains an arboretum, community garden, and cemetery.

7. Defendants EB4200 LLC (hereinafter, "Defendant EB4200") and SG4200 LLC (hereinafter, "Defendant SG4200") are the owners of record and otherwise responsible parties for the subject premises.

8. The mailing address for the OPA Accounts associated with the subject premises is the subject premises itself.

9. Defendant EB4200 is a limited liability company that maintains an address at the subject premises.

10. Defendant EB4200 is registered with the Commonwealth of Pennsylvania Department of State with a registered mailing address of 2228 Hilltop View Road, Unionville, PA 19320.

11. Edward Brown is a member of Defendant EB4200.

12. Edward Brown maintains an address and/or residence at 2228 Hilltop View Road, Unionville, PA 19320.

13. Defendant SG4200 is a limited liability company that maintains an address at the subject premises.

14. Defendant SG4200 is registered with the Commonwealth of Pennsylvania Department of State with a registered mailing address of 2228 Hilltop View Road, Unionville, PA 19320.

15. Susan Garber is a member of Defendant SG4200.

16. Susan Garber maintains an address and/or residence at 2228 Hilltop View Road, Unionville, PA 19320.

17. Defendant UVC Inc. (hereinafter, "Defendant UVC") is the operator of the business at the subject premises.

18. Defendant UVC is a corporate entity that maintains an address at the subject premises.

19. Defendant UVC possesses active Amusement License no. 197537 for the subject premises, which lists the subject premises address as this Defendant's mailing address.

20. Defendant UVC possesses active Food Preparing and Serving License no. 792395 for the subject premises, which lists the subject premises address as this Defendant's mailing address.

21. Defendant UVC is registered with the Commonwealth of Pennsylvania Department of State, which lists the subject premises address as this Defendant's mailing address.

22. John Gillespie is the president of Defendant UVC.

23. John Gillespie maintains an address and/or residence at the subject premises.

24. John Gillespie also maintains an address at 38 Osprey Way, Elkton, MD 21921.

25. The business at the subject premises is a nightclub that has been called “Mill Creek Tavern,” “Crown Lounge,” “Deuces Lounge,” and “Deuces Philly.”

26. As provided by the Home Rule Charter and the Philadelphia Code it is the duty of the Department of Licenses and Inspections (hereinafter, the “Department”) to inspect premises in the City of Philadelphia to determine compliance with the requirements of the Philadelphia Code, issue notices of violation to individuals whom are not in compliance with the Philadelphia, and to initiate legal actions against individuals in violation of the Code. *See* Home Rule Charter § 5-1000 *et seq.*; *see also* Phila. Code §§ A-201, A-202 *et seq.*, A-401 *et seq.*, A-501.1; A-502 *et seq.*; and A-503 *et seq.*

NOTICE OF VIOLATION NUMBER CF-2022-023147

27. The Department inspected the subject premises on or about MARCH 21, 2022.

28. The Department determined that said premises was in violation of the Administrative Code (“A”) and the Fire Code (“F”) of the Philadelphia Building Construction and Occupancy Code, Title 4 of the Philadelphia Code of General Ordinances due to the conditions cited Initial Violation Notice no. CF-2022-023147 dated MARCH 22, 2022, a copy of which is attached as Exhibit “A-1”. The violations listed in Exhibit “A-1” are incorporated herein by reference as if fully set out at length.

29. Subsequently, on or about MARCH 22, 2022, the Department, in accordance with the requirements of Philadelphia Code Sections 1-110 and A-502 *et seq.*, sent an Initial Violation Notice and Order to Defendant UVC, ordering the timely correction of the violations of the subject premises by this Defendant. *See* Exhibit “A-1”.

30. On MAY 20, 2022 and OCTOBER 3, 2022, the Department re-inspected the subject premises and discovered that the above-mentioned violations had not been corrected.

31. On MAY 21, 2022, the Department served a Final Warning to Defendant UVC for those violations which were previously cited but remained uncorrected. A copy of the Final Warning dated MAY 21, 2022 is attached hereto as Exhibit "A-2" and is incorporated herein as if fully set forth at length.

32. Thereafter, the Department determined that the record owners of the subject premises, Defendant EB4200 and Defendant SG4200, had not been properly served with an Initial Notice of Violations.

33. Subsequently, on or about JULY 19, 2022, the Department, in accordance with the requirements of Philadelphia Code Sections 1-110 and A-502 *et seq.*, sent Initial Violation Notices and Orders to Defendant EB4200 and Defendant SG4200, ordering the timely correction of the violations of the subject premises by these Defendants. *See* Exhibits "A-3" and "A-4". The violations listed in Exhibits "A-3" and "A-4" are incorporated herein by reference as if fully set out at length.

34. The Initial Notices of Violations informed the Defendants of their rights to file an appeal within thirty (30) days from the date of the Initial Notices.

35. The Defendants did not file an appeal to the Boards Administration from the issuance of any of the Violation Notices attached as Exhibits "A-1", "A-2", "A-3", and "A-4".

36. As the Defendants have not availed themselves of the administrative remedies provided in the Philadelphia Home Rule Charter and Section 800 of the Administrative Code, sub-code of Title 4, The Building Construction and Occupancy Code, the Defendants are precluded

from challenging the violations and/or notice of violation at issue. *See Gans v. City of Phila.*, 403 A.2d 168, 171 (Pa. Cmwlth. 1979).

37. To date, the violations cited in Violation Case no. CF-2022-023147 have not been fully corrected.

NOTICE OF VIOLATION NUMBER CF-2022-106520

38. The Department inspected the subject premises on or about OCTOBER 18, 2022.

39. The Department determined that said premises was in violation of the Fire Code (“F”) of the Philadelphia Building Construction and Occupancy Code, Title 4 of the Philadelphia Code of General Ordinances due to the conditions cited Initial Violation Notice no. CF-2022-106520 dated OCTOBER 19, 2022, copies of which are attached as Exhibits “B-1” and “B-2”. The violations listed in Exhibits “B-1” and “B-2” are incorporated herein by reference as if fully set out at length.

40. Subsequently, on or about OCTOBER 19, 2022, the Department, in accordance with the requirements of Philadelphia Code Sections 1-110 and A-502 *et seq.*, sent Initial Violation Notices and Orders to Defendant UVC and Defendant EB4200, ordering the timely correction of the violations of the subject premises by these Defendants. *See* Exhibits “B-1” and “B-2”.

41. On OCTOBER 28, 2022 and NOVEMBER 6, 2023, the Department re-inspected the subject premises and discovered that the above-mentioned violations had not been corrected.

42. On OCTOBER 29, 2022, the Department served Final Warnings for those violations which were previously cited but remained uncorrected. Copies of the Final Warnings dated OCTOBER 29, 2022 are attached hereto as Exhibits “B-3” and “B-4” and are incorporated herein as if fully set forth at length.

43. The Initial Notice of Violation informed the Defendants of their rights to file an appeal within thirty (30) days from the date of the notice.

44. The Defendants did not file an appeal to the Boards Administration from the issuance of any of the Violation Notices attached as Exhibits “B-1”, “B-2”, “B-3”, and “B-4”.

45. As the Defendants have not availed themselves of the administrative remedies provided in the Philadelphia Home Rule Charter and Section 800 of the Administrative Code, sub-code of Title 4, The Building Construction and Occupancy Code, the Defendants are precluded from challenging the violations and/or notice of violation at issue. *See Gans v. City of Phila.*, 403 A.2d 168, 171 (Pa. Cmwlth. 1979).

NOTICE OF VIOLATION NUMBER CF-2023-011900

46. The Department inspected the subject premises on or about FEBRUARY 13, 2023.

47. The Department determined that said premises was in violation of the Fire Code (“F”) of the Philadelphia Building Construction and Occupancy Code, Title 4 of the Philadelphia Code of General Ordinances due to the conditions cited Initial Violation Notice no. CF-2023-011900 dated FEBRUARY 14, 2023, a copy of which is attached as Exhibit “C-1”. The violations listed in Exhibit “C-1” are incorporated herein by reference as if fully set out at length.

48. Subsequently, on or about FEBRUARY 14, 2023, the Department, in accordance with the requirements of Philadelphia Code Sections 1-110 and A-502 *et seq.*, sent an Initial Violation Notice and Order to Defendant EB4200 and Defendant SG4200, ordering the timely correction of the violations of the subject premises by these Defendants. *See Exhibit “C-1”*.

49. On NOVEMBER 6, 2023, the Department re-inspected the subject premises and discovered that the above-mentioned violations had not been corrected.

50. On NOVEMBER 7, 2023, the Department served a Final Warning for those violations which were previously cited but remained uncorrected. A copy of the Final Warning dated NOVEMBER 7, 2023 is attached hereto as Exhibit "C-2" and is incorporated herein as if fully set forth at length.

51. The Initial Notice of Violation informed the Defendants of their rights to file an appeal within thirty (30) days from the date of the notice.

52. The Defendants did not file an appeal to the Boards Administration from the issuance of any of the Violation Notices attached as Exhibits "C-1" and "C-2".

53. As the Defendants have not availed themselves of the administrative remedies provided in the Philadelphia Home Rule Charter and Section 800 of the Administrative Code, sub-code of Title 4, The Building Construction and Occupancy Code, the Defendants are precluded from challenging the violations and/or notice of violation at issue. *See Gans v. City of Phila.*, 403 A.2d 168, 171 (Pa. Cmwlth. 1979).

54. To date, the violations cited in Violation Case no. CF-2023-011900 have not been fully corrected.

NOTICE OF VIOLATION NUMBER CF-2023-012667

55. The Department inspected the subject premises on or about FEBRUARY 15, 2023.

56. The Department determined that said premises was in violation of the Fire Code ("F") of the Philadelphia Building Construction and Occupancy Code, Title 4 of the Philadelphia Code of General Ordinances due to the conditions cited Initial Violation Notice no. CF-2023-012667 dated FEBRUARY 16, 2023, a copy of which is attached as Exhibit "D". The violations listed in Exhibit "D" are incorporated herein by reference as if fully set out at length.

57. Subsequently, on or about FEBRUARY 16, 2023, the Department, in accordance with the requirements of Philadelphia Code Sections 1-110 and A-502 *et seq.*, sent an Initial Violation Notice and Order to Defendant EB4200 and Defendant SG4200, ordering the timely correction of the violations of the subject premises by these Defendants. *See* Exhibit “D”.

58. On MAY 3, 2023 and JULY 24, 2023, the Department re-inspected the subject premises and discovered that the above-mentioned violations had not been corrected.

59. The Initial Notice of Violation informed the Defendants of their rights to file an appeal within thirty (30) days from the date of the notice.

60. The Defendants did not file an appeal to the Boards Administration from the issuance of the Violation Notice attached as Exhibit “D”.

61. As the Defendants have not availed themselves of the administrative remedies provided in the Philadelphia Home Rule Charter and Section 800 of the Administrative Code, sub-code of Title 4, The Building Construction and Occupancy Code, the Defendants are precluded from challenging the violations and/or notice of violation at issue. *See Gans v. City of Phila.*, 403 A.2d 168, 171 (Pa. Cmwlth. 1979).

62. To date, the violations cited in Violation Case no. CF-2023-012667 have not been corrected.

NOTICE OF VIOLATION NUMBER CF-2023-099211

63. The Department inspected the subject premises on or about SEPTEMBER 22, 2023.

64. The Department determined that said premises was in violation of the Fire Code (“F”) and the Property Maintenance Code (“PM”) of the Philadelphia Building Construction and Occupancy Code, Title 4 of the Philadelphia Code of General Ordinances due to the conditions cited Initial Violation Notice no. CF-2023-099211 dated SEPTEMBER 26, 2023, a copy of which

is attached as Exhibit “E-1”. The violations listed in Exhibit “E-1” are incorporated herein by reference as if fully set out at length.

65. Subsequently, on or about SEPTEMBER 26, 2023, the Department, in accordance with the requirements of Philadelphia Code Sections 1-110 and A-502 *et seq.*, sent an Initial Violation Notice and Order to Defendant EB4200, ordering the timely correction of the violations of the subject premises by this Defendant. *See* Exhibit “E-1”.

66. On NOVEMBER 6, 2023, the Department re-inspected the subject premises and discovered that the above-mentioned violations had not been corrected.

67. On NOVEMBER 7, 2023, the Department served a Final Warning for those violations which were previously cited but remained uncorrected. A copy of the Final Warning dated NOVEMBER 7, 2023 is attached hereto as Exhibit “E-2” and is incorporated herein as if fully set forth at length.

68. The Initial Notice of Violation informed the Defendant of its right to file an appeal within thirty (30) days from the date of the notice.

69. The Defendant did not file an appeal to the Boards Administration from the issuance of any of the Violation Notices attached as Exhibits “E-1” and “E-2”.

70. As the Defendant has not availed itself of the administrative remedies provided in the Philadelphia Home Rule Charter and Section 800 of the Administrative Code, sub-code of Title 4, The Building Construction and Occupancy Code, the Defendant is precluded from challenging the violations and/or notice of violation at issue. *See Gans v. City of Phila.*, 403 A.2d 168, 171 (Pa. Cmwlth. 1979).

71. To date, the violations cited in Violation Case no. CF-2023-099211 have not been fully corrected.

SPECIAL ASSEMBLY OCCUPANCIES AT THE SUBJECT PREMISES

72. Pursuant to Philadelphia Code section 9-703(1)(a)-(b), a special assembly occupancy is defined as a type of establishment, including a nightclub, discotheque, cabaret, tavern, bar, or restaurant, which provides social entertainment (hereinafter, “special events” or “special assembly occupancies”) for 50 or more people at least once a year, including but not limited to dancing, entertainment by live or recorded music, and/or disk jockeys.

73. Pursuant to Philadelphia Code section 9-703(2)(a), no person shall operate a special assembly occupancy (which holds special events) “without first obtaining a special assembly occupancy license” (hereinafter, an “SAOL”) from the Department.

74. However, pursuant to Philadelphia Code sections 9-703(2)(b)(.4)(a) and (.c), no SAOL “shall be issued or renewed by the Department unless” the location is “a safe and proper place for the purposes of special assembly occupancy”, which includes that the location is found safe pursuant to an inspection “relating to electrical wiring, lawful occupancy, fire safety and emergency exits” and that the location is suitable “taking into consideration such factors as crime, traffic, litter, noise, parking and hours of operation” taking into account community considerations and the views of the Police Department.

75. Over the past several years, the operation of a nightclub at the subject premises has caused several instances of disturbances, fights, assaults, reports of persons with a gun, litter, noise, parking violations, and repeated violations of operating outside of lawful operating hours.

76. On multiple occasions over the past two years, the subject premises was inspected and found to be in violation of the Philadelphia Code with respect to fire safety and emergency exits. *See* Exhibits “A-1”, “A-2”, “A-3”, “A-4”, “B-1”, “B-2”, “B-3”, “B-4”, “C-1”, “C-2”, “D”, “E-1”, and “E-2”.

77. Prior to October 21, 2022, Defendant UVC possessed SAOL no. 716433 for the subject premises.

78. However, due to the disturbances, fights, assaults, reports of persons with a gun, litter, noise, parking violations, and repeated violations of operating outside of lawful operating hours which occurred at the subject premises, on October 21, 2022, the Department issued a Notice of Revocation (the "Notice of Revocation") to Defendant UVC informing it that the Department was revoking its SAOL no. 716433 based on disapproval from the Police Department's 18th District. *See* Exhibit "F-2"; *see also* Phila. Code § 9-703(2)(b)(.4)(c).

79. Despite the revocation action, at all times relevant to this action, including after October 21, 2022, Defendant UVC has operated a nightclub at the subject premises which has required it to possess an SAOL.

80. On multiple occasions over the past two years, Defendant UVC has held special events at the subject premises, including but not limited to providing entertainment by recorded music and/or disk jockeys.

81. On multiple occasions over the past two years, Defendant UVC has advertised these special events on social media.

82. On October 28, 2022, David Joseph, a manager under the employ of Defendant UVC, filed an appeal from the Notice of Revocation to the Board of Licenses and Inspections Review ("BLIR"), which was given BLIR Appeal no. HA-2022-004420. *See* Exhibit "F-3".

83. From October 28, 2022 and October 10, 2023, Defendant UVC continued to operate a nightclub at the subject premises for which an SAOL was required.

84. From October 28, 2022 to October 10, 2023, on multiple occasions, the subject premises was inspected and found to be in violation of the Philadelphia Code with respect to fire safety and emergency exits. *See* Exhibits “C-1”, “C-2”, “D”, “E-1”, and “E-2”.

85. From October 28, 2022 and October 10, 2023, several more instances of disturbances, fights, assaults, reports of persons with a gun, litter, noise, parking violations, and repeated violations involving operating outside of lawful operating hours occurred.

86. On October 9, 2023, Defendant UVC emailed BLIR to withdraw Appeal no. HA-2022-004420.

87. On October 10, 2023, BLIR issued a Notice of Decision that Appeal no. HA-2022-004420 was “City Affirmed” for both a failure to prosecute and for David Joseph’s lack of standing to appeal on behalf of Defendant UVC. *See* Exhibit “F-4”.

88. Thus, as of October 10, 2023, Defendant UVC was aware that the SAOL for the subject premises was revoked and was no longer active.

89. Thus, as of October 10, 2023, Defendant UVC knew that it was not permitted to operate any special events at the subject premises.

90. Despite knowing that it was not permitted to operate any special events after October 10, 2023, Defendant UVC advertised a “Friday the 13th” Party with a disk jockey to occur at the subject premises on the night of OCTOBER 13, 2023.

91. Despite knowing that it was not permitted to operate any special events, on the night of OCTOBER 13, 2023 and the early morning of OCTOBER 14, 2023, Defendant UVC held a special event with a disk jockey at the subject premises.

NOTICE OF VIOLATION NUMBER CF-2023-107917, THE CEASE OPERATIONS ORDER,
AND SUBSEQUENT CEASE ORDER VIOLATION

92. The Department inspected the subject premises in the early morning of OCTOBER 14, 2023.

93. The Department discovered that the Defendants were holding and/or allowing a special event with a disk jockey at the subject premises without the required SAOL.

94. As a result, the Department determined that said premises was in violation of Title 9 of the Philadelphia Code of General Ordinances due to the conditions cited Initial Violation Notice no. CF-2023-107917 dated OCTOBER 20, 2023, copies of which are attached as Exhibits “F-6” and “F-7”. The violations listed in Exhibits “F-6” and “F-7” are incorporated herein by reference as if fully set out at length.

95. Subsequently, on or about OCTOBER 20, 2023, the Department, in accordance with the requirements of Philadelphia Code Sections 1-110 and A-502 *et seq.*, sent an Initial Violation Notice and Order to Defendant EB4200, Defendant SG4200, and Defendant UVC, ordering the timely correction of the violations of the subject premises by these Defendants. *See* Exhibits “F-6 and “F-7”.

96. In addition, the Department issued a Cease Operations Order for the subject premises for “operating without a Special Assembly License”. *See* Exhibit “F-5”.

97. Pursuant to that Cease Operations Order, in the early morning of OCTOBER 14, 2023, the Department vacated the subject premises and posted the Cease Operations Order on the outside of the premises.

98. To date, the Department’s Cease Operations Order remains in effect at the subject premises.

99. On October 27, 2023, the Department informed Defendant UVC that it would not lift the Cease Operations Order until it complied outstanding violations at the subject premises related to the safe operation of the business at the premises. *See, e.g.*, Exhibits “A-1”, “A-3”, “A-4”, “B-1”, “B-2”, “C-1”, and “E-1”.

100. Pursuant to Philadelphia Code section A-505.4, a “Cease Operations Order shall remain posted on the premises until removal by, or with the approval of, the code official upon compliance with its terms.”

101. Pursuant to Philadelphia Code section A-505.8, no person “with knowledge of a Cease Operations Order shall” (3) “Permit any structure or land [. . .] to be occupied by the public until the Cease Operations Order has been lifted by the code official”, nor (4) “Remove, damage, alter or deface any Cease Operations Order”. Phila. Code §§ A-505.8(3), (4).

102. On or about NOVEMBER 8, 2023, the Cease Operations Order posters on the outside of the subject premises were removed without the Department’s permission.

103. On NOVEMBER 10, 2023, the Department re-inspected the subject premises and discovered that premises was open to the public, that members of the public were within the premises, and that the business within the premises was operating in violation of the Cease Operations Order which was still in effect.

104. The Department also observed a disk jockey booth on the first floor of the subject premises with power plugs and speakers ready to be plugged into disk jockey equipment.

105. The Department vacated the subject premises and re-posted its Cease Operations Order for the premises for “operating without a Special Assembly License”. *See* Exhibit “F-8”.

UNLAWFUL TOBACCO PRODUCT SALES AT THE SUBJECT PREMISES

106. Pursuant to Philadelphia Code section 9-631(2)(a), no person shall sell tobacco products in the City of Philadelphia “without a current Tobacco Retailer Permit” for each retail location at which tobacco products are to be sold.

107. At all times relevant to this action, Defendant UVC has not possessed a Tobacco Retailer Permit issued pursuant to Philadelphia Code section 9-631.

108. Therefore, no one may sell tobacco products at the subject premises pursuant to the Philadelphia Code.

109. On December 8, 2016, the City of Philadelphia Department of Public Health (the “Health Department”) adopted regulations related to tobacco retailing (the “City Tobacco Regulations”).

110. Pursuant to section 2(b) the City Tobacco Regulations, the Health Department “shall neither issue nor renew a Tobacco Retailer Permit” if the location of the retailer is within 500 feet of a K-12 school.

111. The subject premises sits approximately 225 feet from the Jubilee School at 4211 Chester Avenue, which is a K-12 school.

112. On OCTOBER 22, 2020, the Health Department inspected the subject premises and observed that Defendant UVC was unlawfully selling tobacco products and permitting hookah use in violation of the Philadelphia Code. *See* Exhibit “F-1” at 3, 4.

113. Subsequently, on or about OCTOBER 22, 2020, the Health Department, in accordance with the requirements of Philadelphia Code Sections 1-110 and 6-502 *et seq.*, provided Defendant UVC with a copy of that date’s Food Facility Inspection Report, ordering the timely correction of the violations of the subject premises by this Defendant. *See* Exhibit “F-1”. The violations listed in Exhibit “F-1” are incorporated herein by reference as if fully set out at length.

114. This Food Facility Inspection Report explicitly ordered Defendant UVC to “immediately remove all tobacco products from the premises until approved by the Health Department.” *See* Exhibit “F-1” at 3, 4.

115. The Initial Notice of Violation informed Defendant UVC of its right to file an appeal from this notice to the Board of License and Inspection Review. *See* Exhibit “F-1” at 4.

116. Defendant UVC did not file an appeal to the Board of License and Inspection Review or the Boards Administration from the Food Facility Inspection Report attached as Exhibit “F-1”.

117. As Defendant UVC has not availed itself of the administrative remedies provided in the Philadelphia Home Rule Charter and Section 800 of the Administrative Code, sub-code of Title 4, The Building Construction and Occupancy Code, this Defendant is precluded from challenging this Food Facility Inspection Report or any of the violations or orders therein. *See Gans v. City of Phila.*, 403 A.2d 168, 171 (Pa. Cmwlth. 1979).

118. Despite being prohibited from selling tobacco products at the subject premises, and despite being ordered in 2020 to remove all tobacco products from the premises, on multiple occasions over the past two years, Defendant UVC has advertised hookah tobacco products for purchase at the subject premises.

119. Defendant UVC has advertised hookah tobacco products within advertisements for special events at the subject premises which were scheduled to occur after the October 14, 2023 Cease Operations Order was imposed.

120. On NOVEMBER 10, 2023, the Department re-inspected the subject premises and discovered hookahs inside customer-accessible areas of the premises.

**COUNT I
STATUTORY FINES**

121. The averments set forth above are incorporated as if fully set forth herein.

122. Pursuant to Section 601 of the Administrative Code of Building Construction and Occupancy Code of the Philadelphia Code, Title 4 of the Philadelphia Code when no timely appeal is filed a statutory fine shall be imposed for each offense for each day it continues after the time to correct has passed. Phila. Code §§ A-601.4, A-601.5, and A-601.6.

123. Pursuant to Section 601 of the Administrative Code of Building Construction and Occupancy Code of the Philadelphia Code, Title 4 of the Philadelphia Code, any person who violates any provision of the Philadelphia Code “shall be subject to a [minimum] fine of \$300.00 for each offense.” Phila. Code § A-601.1.

124. Pursuant Philadelphia Code Section 1-109(2), Class II violations committed on or after January 1, 2006 or thereafter, are subject to a maximum \$1,000.00 fine for each offense.

125. Pursuant Philadelphia Code Section 1-109(3), Class III violations committed on or after January 1, 2009 are subject to a maximum \$2,000.00 fine for each offense.

Statutory Fines and Notice of Violation no. CF-2022-023147

126. Violations of F-807.2, F-1104.31, F-901.6, F-907.4.2.6, F-1031.4, F-1031.3, F-1031.10.2, F-1104.30, F-901.6.4 / F-915.1, F-904.5.1, and A-301.1.1, as cited in Violation Case no. CF-2022-023147, are Class I violations/offenses.

127. Violation Notice no. CF-2022-023147 ordered Defendant UVC to correct the violations by APRIL 25, 2022. *See* Exhibit “A-1”.

128. Violation Notice no. CF-2022-023147 ordered Defendant EB4200 and Defendant SG4200 to correct the violations by AUGUST 22, 2022. *See* Exhibits “A-3” and “A-4”.

129. The violation of F-807.2 was marked complied by the Department on MAY 19, 2022.

130. The period from APRIL 25, 2022 to MAY 19, 2022, excluding the end date, is 24 days.

131. The six (6) violations of F-1104.31, F-901.6, F-907.4.2.6, F-1031.4, F-1031.3, and F-1031.10.2 were marked complied by the Department on JULY 14, 2022.

132. The period from APRIL 25, 2022 to JULY 14, 2022, excluding the end date, is 80 days.

133. The three (3) violations of F-1104.30, F-901.6.4 / F-915.1, and F-904.5.1 were marked complied by the Department on OCTOBER 25, 2022.

134. The period from APRIL 25, 2022 to OCTOBER 25, 2022, excluding the end date, is 183 days.

135. The period from AUGUST 22, 2022 to OCTOBER 25, 2022, excluding the end date, is 64 days.

136. The Department last inspected the violations contained in Violation Notice no. CF-2022-023147 on NOVEMBER 6, 2023.

137. To date, the violation of A-301.1.1 has not been marked complied by the Department.

138. The period from APRIL 25, 2022 to NOVEMBER 6, 2023, including the end date, is 561 days.

139. The period from AUGUST 22, 2022 to NOVEMBER 6, 2023, including the end date, is 442 days.

140. For Violation Notice no. CF-2023-023147, the total statutory fine being sought against Defendant UVC is \$484,200.00 [(1 Class I violation x \$300 per violation per day/offense x 24 days/offenses) + (6 Class I violations x \$300 per violation per day/offense x 80 days/offenses) + (3 Class I violations x \$300 per violation per day/offense x 183 days/offenses) + (1 Class I violation x \$300 per violation per day/offense x 561 days/offenses)].

141. For Violation Notice no. CF-2023-023147, the total statutory fine being sought against Defendant EB4200 and Defendant SG4200 is \$190,200.00 [(3 Class I violations x \$300 per violation per day/offense x 64 days/offenses) + (1 Class I violation x \$300 per violation per day/offense x 442 days/offenses)].

Statutory Fines and Notice of Violation no. CF-2022-106520

142. Violations of F-1010.1.10, as cited in Violation Case no. CF-2022-106520, are Class I violations/offenses.

143. Violation Notice no. CF-2022-106520 ordered Defendant UVC and Defendant EB4200 to correct the violations by NOVEMBER 22, 2022. *See* Exhibits “B-1” and “B-2”.

144. The Department last inspected the violations contained in Violation Notice no. CF-2022-106520 on NOVEMBER 6, 2023.

145. The violation of F-1010.1.10 was marked complied by the Department on NOVEMBER 6, 2023.

146. The period from NOVEMBER 22, 2022 to NOVEMBER 6, 2023, excluding the end date, is 349 days.

147. For Violation Notice no. CF-2022-106520, the total statutory fine being sought against Defendant UVC and Defendant EB4200 is \$104,700.00 (1 Class I violation x \$300 per violation per day/offense x 349 days/offenses).

Statutory Fines and Notice of Violation no. CF-2023-011900

148. Violations of F-105.6 / 19-601, F-308.1.9, F-906.7, F-604.5, F-604.6, F-1104.28, F-1104.5, F-1104.30, and F-304.1, as cited in Violation Case no. CF-2023-011900, are Class I violations/offenses.

149. Violation Notice no. CF-2023-011900 ordered Defendant EB4200 and Defendant SG4200 to correct the violations by MARCH 20, 2023. *See* Exhibit "C-1".

150. The three (3) violations of F-105.6 / 19-601, F-308.1.9, and F-906.7 were marked complied by the Department on NOVEMBER 3, 2023.

151. The period from MARCH 20, 2023 to NOVEMBER 3, 2023, excluding the end date, is 228 days.

152. The two (2) violations of F-604.5 and F-604.6 were marked complied by the Department on NOVEMBER 6, 2023.

153. The period from MARCH 20, 2023 to NOVEMBER 6, 2023, excluding the end date, is 231 days.

154. The Department last inspected the violations contained in Violation Notice no. CF-2023-011900 on NOVEMBER 6, 2023.

155. To date, the four (4) violations of F-1104.28, F-1104.5, F-1104.30, and F-304.1 have not been marked complied by the Department.

156. The period from MARCH 20, 2023 to NOVEMBER 6, 2023, including the end date, is 232 days.

157. For Violation Notice no. CF-2023-011900, the total statutory fine being sought against Defendant EB4200 and Defendant SG4200 is \$622,200.00 [(3 Class I violations x \$300 per violation per day/offense x 228 days/offenses) + (2 Class I violations x \$300 per violation per

day/offense x 231 days/offenses) + (4 Class I violations x \$300 per violation per day/offense x 232 days/offenses)].

Statutory Fines and Notice of Violation no. CF-2023-012667

158. Violations of F-1104.16.5.1.8 / F-1011, as cited in Violation Case no. CF-2023-012667, are Class III violations/offenses.

159. Violation Notice no. CF-2023-012667 ordered Defendant EB4200 and Defendant SG4200 to correct the violations by MARCH 22, 2023. *See* Exhibit “D”.

160. The Department last inspected the violations contained in Violation Notice no. CF-2023-012667 on JULY 24, 2023, and none of the violations cited were complied.

161. The period from MARCH 22, 2023 to JULY 24, 2023, including the end date, is 125 days.

162. For Violation Notice no. CF-2023-012667, the total statutory fine being sought against Defendant EB4200 and Defendant SG4200 is \$250,000.00 (1 Class III violation x \$2,000 per violation per day/offense x 125 days/offenses).

Statutory Fines and Notice of Violation no. CF-2023-099211

163. Violations of PM-504.1, PM-506.3, F-5003.3.1.4, and F-5303.5.2, as cited in Violation Case no. CF-2023-099211, are Class I violations/offenses.

164. Violation Notice no. CF-2023-099211 ordered Defendant EB4200 to correct the violations by OCTOBER 30, 2023. *See* Exhibit “E-1”.

165. The three (3) violations of PM-504.1, PM-506.3, and F-5003.3.1.4 were marked complied by the Department on NOVEMBER 3, 2023.

166. The period from OCTOBER 30, 2023 to NOVEMBER 3, 2023, excluding the end date, is 4 days.

167. The Department last inspected the violations contained in Violation Notice no. CF-2023-099211 on NOVEMBER 6, 2023.

168. To date, the violation of F-5303.5.2 has not been marked complied by the Department.

169. The period from OCTOBER 30, 2023 to NOVEMBER 6, 2023, including the end date, is 8 days.

170. For Violation Notice no. CF-2023-099211, the total statutory fine being sought against Defendant EB4200 is \$6,000.00 [(3 Class I violations x \$300 per violation per day/offense x 4 days/offenses) + (1 Class I violation x \$300 per violation per day/offense x 8 days/offenses)].

WHEREFORE, Plaintiff seeks a judgment against Defendant EB4200 LLC in the amount of **\$1,173,100.00**, a judgment against Defendant SG4200 LLC in the amount of **\$1,062,400.00**, and a judgment against Defendant UVC Inc. in the amount of **\$588,900.00** for statutory fines pursuant to the Philadelphia Code.

COUNT II REINSPECTION FEES

171. The averments set forth above are incorporated as if fully set forth herein.

172. Pursuant to Philadelphia Code Section A-901.12.2, the City of Philadelphia is entitled to reinspection fees “for all second and subsequent reinspections” when the Department of Licenses and Inspections “determines that a condition previously found not in compliance with [the Philadelphia Code] ...continues not to be in compliance.”

173. The City of Philadelphia is authorized to charge \$100 for the second reinspection, \$200 for the third reinspection, and \$350 for the fourth and all subsequent re-inspections. Phila. Code § A-901.12.2.

Reinspection Fees for Violation Case no. CF-2022-023147

174. As of NOVEMBER 6, 2023, for Violation Case no. CF-2022-023147, the Department re-inspected the subject premises on or about MAY 20, 2022 and NOVEMBER 6, 2023, and at each reinspection discovered that the above-mentioned violations had not been corrected.

175. Pursuant to Philadelphia Code Section A-901.12.2, Defendant UVC is responsible for \$100.00 of re-inspections fees for Violation Case no. CF-2022-023147.

Reinspection Fees for Violation Case no. CF-2023-012667

176. As of JULY 24, 2023, for Violation Case no. CF-2023-012667, the Department re-inspected the subject premises on or about MAY 3, 2023 and JULY 24, 2023, and at each reinspection discovered that the above-mentioned violations had not been corrected.

177. Pursuant to Philadelphia Code Section A-901.12.2, Defendant EB4200 and Defendant SG4200 are responsible for \$100.00 of re-inspections fees for Violation Case no. CF-2023-012667.

WHEREFORE, Plaintiff seeks a judgment against Defendant EB4200 LLC in the amount of **\$100.00**, a judgment against Defendant SG4200 LLC in the amount of **\$100.00**, and a judgment against Defendant UVC Inc. in the amount of **\$100.00** for reinspection fees.

**COUNT III
COMPLIANCE/REMEDiation OF CODE VIOLATIONS AND PUBLIC NUISANCES**

178. The averments set forth above are incorporated as if fully set forth herein.

179. Pursuant to Section 105 of the Administrative Code, the Defendants are responsible for maintaining the subject premises in accordance with the provisions of the Philadelphia Code.

180. Pursuant to Section 503.1 of the Administrative Code, after the time for compliance has expired, if the violation(s) still exists the City may take legal action requiring the correction or

removal of the violation(s) by the responsible party and/or to prevent the use of the premises/structure or further work at the premises.

181. Pursuant to Section 503.2 of the Administrative Code, after the time for compliance has expired and if the violations are not complied the Department is authorized to correct the violations itself or by contract.

182. Pursuant to Section 503.2 of the Administrative Code, if the Department, by itself or by contract, corrects the violation the Department, in addition to all other penalties, is authorized to charge the responsible party for the costs of the remediation/abatement and an additional administrative charge.

183. The current administrative charge is twenty-one percent (21%) of the cost of the remediation/abatement.

184. Pursuant to Section A-505.1 of the Administrative Code, the Department may issue a Cease Operations Order whenever an occupancy, use or other activity is being performed without the required permits or certificates, or whenever any condition is observed which presents an immediate danger to life or property.

185. As stated above, no person shall operate a special assembly occupancy (which holds special events) without an active SAOL. Phila. Code § 9-703(2)(a).

186. The subject premises does not possess an active SAOL.

187. Philadelphia Code section 6-103 authorizes the Health Department to issue their own Cease Operations Orders for violations of Title 6 of the Philadelphia Code of General Ordinances (hereinafter, the "Health Code").

188. Philadelphia Code section 6-502(1) separately authorizes the Health Department to issue orders requiring action or forbearance from action where required by the Health Code or the regulations adopted thereunder.

189. As stated above, no person shall sell tobacco products without a current Tobacco Retailer Permit issued by the Health Department. Phila. Code § 9-631(2)(a).

190. The subject premises does not possess a current Tobacco Retailer Permit.

Abatement of Violations cited in Violation Notice no. CF-2022-023147

191. Compliance of the violations cited in Violation Notice no. CF-2022-023147 by Defendant UVC was due by APRIL 25, 2022. *See* Exhibit “A-1”.

192. Compliance of the violations cited in Violation Notice no. CF-2022-023147 by Defendant EB4200 and Defendant SG4200 was due by AUGUST 22, 2022. *See* Exhibits “A-3” and “A-4”.

193. As of the date of this filing, these violations are not complied.

Abatement of Violations cited in Violation Notice no. CF-2023-011900

194. Compliance of the violations cited in Violation Notice no. CF-2023-011900 was due by MARCH 20, 2023. *See* Exhibit “C-1”.

195. As of the date of this filing, these violations are not complied.

Abatement of Violations cited in Violation Notice no. CF-2023-012667

196. Compliance of the violations cited in Violation Notice no. CF-2023-012667 was due by MARCH 22, 2023. *See* Exhibit “D”.

197. As of the date of this filing, these violations are not complied.

Abatement of Violations cited in Violation Notice no. CF-2023-099211

198. Compliance of the violations cited in Violation Notice no. CF-2023-099211 was due by OCTOBER 30, 2023. *See* Exhibit “E-1”.

199. As of the date of this filing, these violations are not complied.

Abatement of Violations cited in Violation Notice no. CF-2023-107917

200. Compliance of the violations cited in Violation Notice no. CF-2023-107917 is due by NOVEMBER 23, 2023. *See* Exhibits “F-6” and “F-7”.

201. As of the date of this filing, these violations are not complied.

WHEREFORE, Plaintiff, City of Philadelphia, respectfully prays that this Honorable Court grant an order granting the following relief:

(a) an order authorizing the Department to conduct a full and complete interior and exterior inspection to determine if there are additional violations;

(b) an order directing the Defendants to cease commercial use and occupancy of the subject premises and to secure the subject premises until all Philadelphia Code violations at the premises have been brought into compliance;

(c) an order authorizing the Department to enforce the cease and vacation of the subject premises and to lock and secure the subject premises from re-entry;

(d) an order directing the Defendants to correct all violations included in Notices of Violation nos. CF-2022-023147, CF-2023-011900, CF-2023-012667, CF-2023-099211, and CF-2023-107917;

(e) an order permitting the City to fully and completely inspect the subject premises to determine whether the Defendants have corrected all violations in Notices of

Violation nos. CF-2022-023147, CF-2023-011900, CF-2023-012667, CF-2023-099211, and CF-2023-107917; and,

(f) grant such other relief as this Court deems appropriate.

**COUNT IV
ABATEMENT OF PUBLIC NUISANCE**

202. Pursuant to Section A-505.1 of the Administrative Code, the Department may issue a Cease Operations Order whenever an occupancy, use or other activity is being performed without the required permits or certificates, or whenever any condition is observed which presents an immediate danger to life or property.

203. As stated above, no person shall operate a special assembly occupancy (which holds special events) without an active SAOL. Phila. Code § 9-703(2)(a).

204. Violating Philadelphia Code section 9-703(2)(a) constitutes a nuisance *per se*.

205. The subject premises does not possess an active SAOL.

206. Furthermore, Department's revocation of the SAOL for the subject premises was due to the Police Department's 18th District disapproval and determination that the premises was not "a safe and proper place for the purposes of special assembly occupancy" taking into account "crime, traffic, litter, noise, parking and hours of operation". See Exhibit "F-2"; Phila. Code § 9-703(2)(b)(.4)(c).

207. The Police Department's determination was based on over two years of disturbances, fights, assaults, reports of persons with a gun, litter, noise, parking violations, and repeated violations of operating outside of lawful operating hours at the subject premises.

208. Thus, the operation of a special assembly occupancy at the subject premises constituted a public nuisance.

209. Because BLIR affirmed the Department's revocation of Defendant UVC's SAOL, and because this revocation was based on this Police Department determination, Defendant UVC is prohibited from challenging the determination that its special assembly occupancy operations constituted a public nuisance due to the failure to exhaust its administrative remedies. *Gans v. City of Phila.*, 403 A.2d 168, 171 (Pa. Cmwlth. 1979).

210. Philadelphia Code section 6-103 authorizes the Health Department to issue Cease Operations Orders for violations of Title 6 of the Philadelphia Code of General Ordinances (hereinafter, the "Health Code").

211. Philadelphia Code section 6-502(1) separately authorizes the Health Department to issue orders requiring action or forbearance from action where required by the Health Code or the regulations adopted thereunder.

212. Philadelphia Code section 9-631(2)(a) prohibits the sale of tobacco products without a current Tobacco Retailer Permit issued by the Health Department, and selling tobacco products without such a Permit is a nuisance as a matter of law. Phila. Code § 9-631(2)(a).

213. The subject premises does not possess a current Tobacco Retailer Permit.

214. Therefore, the City of Philadelphia is authorized to cease Defendant UVC's activity at the subject premises to abate the nuisances it continues to cause. Phila. Code §§ A-505.1, 9-703(2)(b)(.4)(.c), 9-631(2)(a), 6-103, 6-502(1).

WHEREFORE, Plaintiff, City of Philadelphia, respectfully prays that this Honorable Court grant an order granting the following relief:

(a) an order prohibiting the Defendants from holding special assembly occupancies at the subject premises without a Special Assembly Occupancy License, and

requiring the Defendants to remove any and all equipment at the premises installed for that purpose, including but not limited to the disk jockey booth;

(b) an order prohibiting the Defendants from storing tobacco products on site at the subject premises without a Tobacco Retailer Permit, and requiring the Defendants to remove any and all tobacco products from the premises;

(c) an order directing Defendant UVC to permanently cease commercial use and occupancy of the subject premises and to secure the subject premises, in order to abate the nuisances caused by such use and occupancy;

(d) an order authorizing the Department to enforce the cease and vacation of the subject premises and to lock and secure the subject premises from re-entry; and,

(e) grant such other relief as this Court deems appropriate.

Respectfully Submitted:

KRISTIN BRAY
ACTING CITY SOLICITOR

JOANNA KLEIN
CHIEF DEPUTY CITY SOLICITOR

BY: /s/ Jeffrey Cohen
JEFFREY COHEN
DEPUTY CITY SOLICITOR

Attorneys for Plaintiff
City of Philadelphia

VERIFICATION

Filed and Attested by the
Office of Judicial Records
20 NOV 2023 12:41 pm
T. FOBBS



PROPERTY ADDRESS: 4200 Chester Ave.

I, Sherelle Alford, do hereby verify and state that I am an agent for the Plaintiff City of Philadelphia's Department of Licenses and Inspections; that I am authorized to make this verification on behalf of the Plaintiff City; that I have reviewed the foregoing Complaint; and that the facts set forth in this document are true and correct to the best of my knowledge, information, and belief. This verification is made pursuant to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink that reads 'Sherelle Alford'.

Sherelle Alford, Manager of Litigation
Litigation Support Unit

Agent for Plaintiff
City of Philadelphia
Department of Licenses and Inspections

Date: 11/20/23

EXHIBIT 5

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

CITY OF PHILADELPHIA	:	COURT OF COMMON PLEAS
Plaintiff,	:	PHILADELPHIA COUNTY
	:	CIVIL TRIAL DIVISION
v.	:	
	:	NOVEMBER TERM, 2023
UVC INC., EB4200 LLC, and SG4200 LLC	:	NO. 02137
Defendants.	:	

ORDER FOR PRELIMINARY INJUNCTION

AND NOW, this 22nd day of November, 2023, upon consideration of the Preliminary Injunction and Complaint filed by the Plaintiff, City of Philadelphia, any response thereto, and the hearing held thereupon, it is hereby **DETERMINED** that:

1. Plaintiff, City of Philadelphia (the "City"), is a municipal corporation of the first class of the Commonwealth of Pennsylvania under the Act of April 21, 1949, P.L. 665, § 1, *et seq.*
2. The Defendants EB4200 LLC and SG4200 LLC are the owners of record of and responsible parties for the premises located at 4200 Chester Avenue, Philadelphia, Pennsylvania (the "subject premises") and are responsible for maintaining the subject premises in accordance with the Philadelphia Code.
3. The Defendant UVC Inc. is a commercial tenant at the subject premises, which operates a tavern at that premises and is responsible for operating lawfully at that premises in accordance with the Philadelphia Code.
4. On multiple occasions over the past two years, the Department has inspected the subject premises and determined that said premises was in violation of the Administrative Code ("A"), the Fire Code ("F"), and the Property Maintenance Code ("PM") of the Philadelphia

Building Construction and Occupancy Code, Title 4 of the Philadelphia Code of General Ordinances.

5. The Department, on the following dates, issued Notices of Violations (“NOVs”) to the Defendants ordering the correction of Administrative Code, Fire Code, and Property Maintenance Code violations at the subject premises:

- a. NOV no. CF-2022-023147, issued on 3/22/2022 to Defendant UVC and on 7/19/2022 to Defendant EB4200 and Defendant SG4200;
- b. NOV no. CF-2023-011900, issued on 2/14/2023 to Defendant EB4200 and Defendant SG4200;
- c. NOV no. CF-2023-012667, issued on 2/16/2023 to Defendant EB4200 and Defendant SG4200; and,
- d. NOV no. CF-2023-099211, issued on 9/26/2023 to Defendant EB4200.

6. To date, the Administrative Code, Fire Code, and Property Maintenance Code violations cited in the four (4) NOVs above have not been fully corrected.

7. Pursuant to Philadelphia Code section 9-703(1)(a)-(b), a special assembly occupancy is defined as a type of establishment, including a nightclub, discotheque, cabaret, tavern, bar, or restaurant, which provides social entertainment (hereinafter, “special events” or “special assembly occupancies”) for 50 or more people at least once a year, including but not limited to dancing, entertainment by live or recorded music, and/or disk jockeys.

8. Pursuant to Philadelphia Code section 9-703(2)(a), no person shall operate a special assembly occupancy (which holds special events) “without first obtaining a special assembly occupancy license” (hereinafter, an “SAOL”) from the Department.

9. The Defendants do not possess an active SAOL for the subject premises.

10. Therefore, the Defendants are prohibited from holding special assembly occupancies at the subject premises without the required SAOL.

11. On October 14, 2023, the City Department of Licenses and Inspections (the "Department") inspected the subject premises and found a special event with a disk jockey in progress at the subject premises without the required SAOL.

12. As a result, on October 14, 2023, the Department issued a Cease Operations Order for the subject premises, vacated the premises, and posted the Cease Operations Order on the outside of the premises.

13. On or about NOVEMBER 8, 2023, the Cease Operations Order posters on the outside of the subject premises were removed without the Department's permission.

14. On NOVEMBER 10, 2023, the Department re-inspected the subject premises and discovered that premises was open to the public, that members of the public were within the premises, and that the business within the premises was operating in violation of the Cease Operations Order.

15. The Department also observed a disk jockey booth on the first floor of the subject premises with power plugs and speakers ready to be plugged into disk jockey equipment.

16. Pursuant to Philadelphia Code section 9-631(2)(a), no person shall sell tobacco products in the City of Philadelphia "without a current Tobacco Retailer Permit" for each retail location at which tobacco products are to be sold.

17. The Defendants do not possess a Tobacco Retailer Permit issued pursuant to Philadelphia Code section 9-631.

18. Therefore, the Defendants are prohibited from selling tobacco products at the subject premises without the required Tobacco Retailer Permit.

19. On OCTOBER 22, 2020, the Health Department inspected the subject premises, observed that Defendant UVC was unlawfully selling tobacco products and permitting hookah use in violation of the Philadelphia Code, and ordered this Defendant to immediately remove all tobacco products from the premises.

20. Subsequently, on or about OCTOBER 22, 2020, the Health Department provided Defendant UVC with a copy of that date's Food Facility Inspection Report, containing the findings and order in the paragraph above.

21. Defendant UVC did not file an appeal from this Food Facility Inspection Report to the Boards Administration, thus the findings and orders contained therein are deemed admitted due to the failure to exhaust administrative remedies.

22. On NOVEMBER 10, 2023, the Department re-inspected the subject premises and discovered hookahs inside customer-accessible areas of the premises.

23. Clear and credible evidence has been presented that the Defendants' activities are violating multiple provisions of the Philadelphia Code.

24. This Court finds that these violations pose a public safety risk.

25. The City has a clear right to injunctive relief and is likely to prevail on the merits.

It is therefore **ORDERED, ADJUDGED** and **DECREED** as follows:

26. Until further order of this Court, the Department shall not lift its October 14, 2023

Cease Operations Order, unless and until:

- a. ~~The Defendants have~~ ^{Defendant UVC has} removed the disk jockey booth and all disk jockey equipment from the subject premises;

- b. ~~The Defendants have~~ ^{Defendant UVC has} removed all tobacco products from the subject premises;
- c. The Defendants have complied all Administrative Code, Fire Code, and Property Maintenance Code violations cited in NOVs nos. CF-2022-023147, CF-2023-011900, CF-2023-012667, and CF-2023-099211;
- d. The Department has reinspected the subject premises to confirm compliance of the above three (3) conditions; and,
- e. The Court has given its approval to modify this Injunction and Order.

27. While the October 14, 2023 Cease Operations Order remains in effect, the Department, with the assistance of the Philadelphia Police Department and/or Philadelphia Sheriff's Office and/or a locksmith, is authorized to:

- a. Vacate the Subject Premises and remove any person from the premises who is not an Authorized Person pursuant to this Court's orders. If any such person refuses to vacate the subject premises, the Department is authorized to utilize the assistance of the Police Department and/or the Philadelphia Sheriff's Office to remove such person(s) from the premises, without the need for a writ of possession, and to use whatever reasonable force is necessary to remove any such person(s) from the premises.
- b. Retain the services of a locksmith, if necessary, to gain entry to the subject premises to carry out the cease and vacation the premises, the costs of which may be entered as liens against the subject premises in favor of the City.

28. The Defendants shall not hold any special assembly occupancies at the subject premises without the required Special Assembly Occupancy License, ^{provided that the Defendant at issue is in possession of the premises}

29 ~~28~~. Until further order of this Court, ^{Defendant UK} ~~the Defendants~~ shall not allow any disk jockey equipment into the subject premises and shall not bring into or construct any disk jockey booth within the subject premises.

30 ~~29~~. The Defendants shall not sell nor offer for sale any tobacco products at the subject premises without the required Tobacco Retailer Permit, ^{provided that the Defendant not issue it} ~~in possession of the premises.~~

31 ~~30~~. Until further order of this Court, ^{Defendant UK} ~~the Defendants~~ shall not allow any tobacco products at the subject premises, nor allow any person to bring tobacco products into the subject premises.

32 ~~31~~. The terms of this Order shall be binding upon the Defendants, and any agents, lessees, heirs, assigns, successors in interest, and all persons acting in or for their behalf or occupying the subject premises.

33 ~~32~~. This Order shall remain in full force and effect until this Court specifically orders otherwise.

34 ~~33~~. The Defendants shall obey the orders of this Court or else be found in contempt.

a. The Court shall consider instances of contempt to be separate if they occur on different days, if they involve different types of conduct, if they involve different locations, portions, or rooms within the subject premises, or if they involve different parts, fixtures, accessories, or physical characteristics of the subject premises.

b. If a violation of this Court's orders continues for more than one day, each day shall be considered a separate instance of contempt.

c. Any fines for contempt issued against the Defendants shall be separate from, and in addition to, any statutory fines imposed for the violations of the Philadelphia Code set forth in the City's complaint in the above-captioned matter.

35 ~~32~~. A status hearing shall be held on this Petition on the 5th day of December, 2023, at 11:00 a.m./p.m., at City Hall, Courtroom 446, Philadelphia, Pennsylvania. Failure to attend the Court hearing may result in the Court issuing further injunctive relief and/or other appropriate orders against the Defendants.

BY THE COURT:

J.

EXHIBIT 6

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
 FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
 CIVIL TRIAL DIVISION



CITY OF PHILADELPHIA	:	COURT OF COMMON PLEAS
Plaintiff,	:	PHILADELPHIA COUNTY
	:	CIVIL TRIAL DIVISION
v.	:	
	:	NOVEMBER TERM, 2023
UVC INC., EB4200 LLC, and SG4200 LLC	:	NO. 02137
Defendants.	:	

**FINAL ORDER AND PERMANENT INJUNCTION BY AGREEMENT WITH
 RESPECT TO DEFENDANTS EB4200, LLC AND SG4200, LLC**

AND NOW, this 31st day of May, 2024, upon consideration of the Complaint filed by the Plaintiff, City of Philadelphia, any response(s) thereto, the November 22, 2023 Order for Preliminary Injunction, the January 11, 2024 Order Modifying Preliminary Injunction, and by agreement of the Plaintiff, Defendant EB4200, LLC, and Defendant SG4200, LLC, the Court hereby **FINDS** and **ORDERS** that:

1. Plaintiff, City of Philadelphia (the "City"), is a municipal corporation of the first class of the Commonwealth of Pennsylvania under the Act of April 21, 1949, P.L. 665, § 1, *et seq.*
2. Defendants EB4200, LLC and SG4200, LLC are the owners of record of and responsible parties for the premises located at 4200 Chester Avenue, Philadelphia, Pennsylvania (the "subject premises").
3. Defendant UVC Inc. is no longer in possession or control of any portion of the subject premises.
4. With respect to Defendants EB4200, LLC and SG4200, LLC, the instant Final Order and Permanent Injunction by Agreement hereby supersedes, supplants, and replaces the provisions of the November 22, 2023 Order for Preliminary Injunction and the January 11, 2024

STPLF-City Of Philadelphia Vs Uvc Inc Etal



Order Modifying Preliminary Injunction which apply to Defendants EB4200 LLC and SG4200 LLC.

5. As to **COUNT I** of the Plaintiff's Complaint, the Plaintiff, Defendant EB4200, LLC, and Defendant SG4200, LLC hereby agree that a statutory fine in the total amount of **\$19,900.00** shall be imposed upon Defendants EB4200, LLC and SG4200, LLC in favor of the Plaintiff City for all violations cited in and/or incorporated into the Plaintiff's Complaint.

6. As to **COUNT II** of the Plaintiff's Complaint, the Plaintiff, Defendant EB4200, LLC, and Defendant SG4200, LLC hereby agree that reinspection fees in the total amount of **\$100.00** shall be imposed upon Defendants EB4200, LLC and SG4200, LLC in favor of the Plaintiff City arising from the reinspections cited in the Plaintiff's Complaint.

7. Payment of the **\$20,000.00** total fines and fees levied above as to Defendants EB4200, LLC and SG4200, LLC shall be made via certified check, money order, or attorney or firm check from an IOLTA account payable to the "City of Philadelphia" and remitted to the counsel of record at 1515 Arch Street, 15th Floor, Philadelphia, PA 19102 with "CCP 231102137" written in the memo line. If the total amount of these fines and reinspection fees is not fully paid by **August 2, 2024** (the "payment due date"), this total amount shall be entered as a judgment in favor of the City of Philadelphia against Defendants EB4200, LLC and SG4200, LLC by the Prothonotary upon praecipe of the City of Philadelphia.

8. As to **COUNTS III and IV** of the Plaintiff's Complaint, the Plaintiff, Defendant EB4200, LLC, and Defendant SG4200, LLC hereby agree that for three (3) years from the date of this Final Order and Permanent Injunction by Agreement, the Defendant EB4200, LLC, and Defendant SG4200 shall:

- a. Make payment to the Plaintiff by the payment due date per the terms of the paragraph above, as time is of the essence;
- b. Not operate any speakeasy, nightclub, or other venue requiring a Special Assembly Occupancy License unless subject premises has the required permit(s), certificate(s), and license(s) to do so;
- c. Not allow any indoor use of grills or heaters powered by propane, kerosene, or other flammable gas unless such use complies with all applicable laws;
- d. Make all reasonable efforts and take all required actions to ensure that all oil and grease on the premises is properly contained and disposed of; and,
- e. Make all reasonable efforts and take all required actions to ensure that fire egress and all required fire egress illumination is properly maintained within the subject premises.

9. If Defendants EB4200, LLC and SG4200, LLC fail to comply with the terms of the paragraph above, the Plaintiff shall send written notice to Defendants EB4200, LLC and SG4200, LLC of such breach, and if the breach is not cured within five (5) calendar days of such notice, the Plaintiff may file a motion to enforce this Order which shall specify the term(s) allegedly breached, the dates of such breach(es), and any details necessary to describe such breach(es) as distinct and separate occurrence(s).

- a. For the purposes of this paragraph, a breach shall be considered separate and distinct from other breaches if it occurred on a different day, if it involved different type(s) of conduct, if it involved different locations within, portions of, or rooms within the subject premises, or if it involved different parts, fixtures, accessories, or physical characteristics of the subject premises. If a failure to

comply with the terms of the paragraph above continues for more than one day, each separate day shall constitute a separate breach.

b. Upon the filing of the Plaintiff's motion, the Court shall schedule a hearing to determine whether Defendants EB4200, LLC and SG4200, LLC have failed to comply with the terms of the paragraph above. The Plaintiff, Defendant EB4200, LLC, and Defendant SG4200, LLC may resolve the Plaintiff's motion by joint stipulation prior to this hearing. If the motion is not resolved by joint stipulation, the Plaintiff, Defendant EB4200, LLC, and Defendant SG4200, LLC shall have an opportunity at the hearing before the Court to present evidence and testimony regarding the existence of the breach(es) alleged in the Plaintiff's motion, after which the Court will determine whether each breach alleged in the motion occurred and/or existed.

c. The Plaintiff, Defendant EB4200, LLC, and Defendant SG4200, LLC agree that a stipulated penalty of five hundred dollars (\$500.00) shall be assessed for each breach determined by the Court to have occurred and/or existed, unless these parties have stipulated otherwise in writing or on the record at the hearing.

d. Nothing in this paragraph shall prevent the Plaintiff City from lawfully exercising its police powers or from seeking any relief, including but not limited to injunctive relief, separate and apart from the above-captioned action or from any penalty or provision of this paragraph, where the City is authorized by law to do so.

10. The terms of this Order shall be binding upon Defendants EB4200, LLC and SG4200, LLC, and any agents, lessees, heirs, assigns, successors in interest, and all persons acting in or for their behalf or occupying the subject premises.

11. This is a final order with respect to Defendants EB4200, LLC and SG4200, LLC. Unless specifically ordered by this Court or subject to a subpoena, Defendants EB4200, LLC and SG4200, LLC shall not be required to attend the non-jury trial in the above-captioned matter which is currently scheduled for October 1, 2024 at 9:00 a.m. in City Hall Courtroom 243.

Jeffrey Cohen

Digitally signed by Jeffrey Cohen
Date: 2024.05.31 16:23:57 -04'00'

Attorney for Plaintiff

Michael Mattioni

Digitally signed by: Michael Mattioni
DN: CN = Michael Mattioni email =
mmattioni@mattioni.com C = US
Date: 2024.05.31 16:30:11 -04'00'

Attorney for Defendants EB4200, LLC
and SG4200, LLC

BY THE COURT:



J.

EXHIBIT 7

Contractor Proposal



Services Performed for:

Edward Brown
EB 4200 LLC
SG 4200 LLC

First Call Demolition LLC
722 Clearview Avenue
Woodbury Heights, NJ 08097
www.FirstCallDemo.com

Date of Proposal: 2/23/2024
Job Site Address: 4200 Chester Avenue, Phila, PA
Walk-through date: 2/2024
Work Duration: 30 days
Major Scope: Full Take Down

Scope of Work- Structural Demolition

- Complete demolition of the structure and haul away all demolition debris.
- Backfill and grade newly exposed basement. Foundation walls will not be removed.
- Submission of standard demolition, zoning, and street permits to the city of Philadelphia on the owner's behalf.
- All administrative and clerical work related to the demolition, including all regulated postings/site signage.
- Contact the utilities for disconnect of services (phone, gas, water, & electric).
- Have chain link fence up during all aspect of demolition until the demolition work is completed.
- Plumbing permit is also to be included in the total price (if necessary).
- Sealing of sewer lateral is also included in this price.
- All dumpster and recycling Services and Asbestos Laboratory Report 9if required).
- Property will be covered on our Liability Insurance until the job is completed.

Total Price: \$124,000

The price breakdown is as follows:

- \$10,000 deposit due at contract signing (non-refundable, unless First Call is unable to obtain the demolition permit, less reasonable costs incurred by First Call in seeking the permit)
- 50% due upon commencement of demolition construction (day of demo start)
- 50% due upon completion of demolition construction (day of completion)

Some exclusions may apply. This price does not include permit engineering fees, special inspections, asbestos, dust, erosion, tank removals, and any required structural supports if needed. Payment terms: A \$50 per date late fee will apply to all late payments. Cash or check written to First Call Demo & Clean Outs is accepted with no additional cost. Mailing a check must be postmarked five days before tentative completion. Electronic payments will be charged an additional fee of 4%. Payment is due at demo completion, not permit closure. General: All salvage becomes property of First Call Demolition LLC, First Call will work with L&I to close out the demo permit as it affects both the owner and contractor. We will comply with all city regulations. Rear/front/side yards are not considered in the scope of included work unless noted above—no junk hauling, demo, or vegetation removals in these areas will be provided. The demolition contractor must have clear access to the work areas and a cleared path to haul the trash. Please remove all personal or salvageable items. If items cannot be removed, the client must cover/protect all items or surfaces. We will not be responsible for damage to unsecured personal belongings or surfaces during demolition. This price will increase if additional items not present during the walk-through estimate are added to the property or if any work areas are altered before the start date. Add-on site work will be paid in full when requested or when the contractor decides. This contract assumes there are no extra floor, wall, or ceiling layers present in the home that could not be seen during the initial walk-through, and standard construction practices were used in the building of this home. The contract assumes that no hazards on this property will threaten our crew's safety. This price is contracted for only the items listed in this agreement. First Call Demolition reserves the right to terminate this contract if the client does not meet the terms above. This proposal is good for thirty days from the day it was written.

Signature of Client* Richard Matthew, attorney Date 2/29/24
for EB4200 LLC and SG4200 LLC

*By signing this, I agree that I am the owner or am representing the owner of the property mentioned above and have full authority and permission to alter the property for demolition.

Signature of Contractor _____ Date _____

EXHIBIT 8



Notice of Demolition Permit

Permit Number DP-2024-000397

LOCATION OF WORK

4200 CHESTER AVE, Philadelphia, PA 19104-4416

There are two parcels here but they have built a structure around and combined them. 4202 will be filed on a separate permit.

PERMIT FEE

\$1,226.50

DATE ISSUED

6/19/2024

ESTIMATED COST

\$124,000.00

DISTRICT

SOUTH

PERMIT HOLDER

EB4200 LLC, SG4200 LLC

4200 CHESTER AVE PHILADELPHIA, PA 19104-

CONTRACTOR

Carmen Scialabba

FIRST CALL DEMO AND CLEAN OUTS 1114 CANTRELL ST PHI

TYPE OF WORK

Minor Demolition

OWNER CONTACT 1

OWNER CONTACT 2

APPROVED SCOPE OF WORK

FOR THE COMPLETE DEMOLITION OF THE EXISTING THREE (3) STORY MASONRY STRUCTURE, ALL PERMITTED DEMOLITION ACTIVITY TO BE DONE IN ACCORDANCE WITH SITE SAFETY DEMOLITION PLAN AND SUCH PLAN TO BE MAINTAINED ON SITE AT ALL TIMES. DEMOLITION TO BE DONE BY MECHANICAL AND HAND TOOLS SEQUENCE AS PER PLANS. PROTECTION OF PEDESTRIANS, PUBLIC RIGHT-OF-WAY, AND ADJACENT PROPERTIES TO BE IN PLACE PRIOR TO START OF WORK. SEPARATE STREETS DEPARTMENT APPROVAL REQUIRED FOR RIGHT-OF-WAY ENCROACHMENT OR CLOSURE.**DEMOLITION TO OCCUR SIMULTANEOUSLY WITH 4200 CHESTER AVE.** ASBESTOS ABATEMENT REQUIRED PRIOR TO START OF WORK.**



POST A TRUE COPY OF THIS NOTICE IN A CONSPICUOUS LOCATION ON THE PREMISES

Permits must be posted for the entire time work approved herein is performed. Zoning Permits shall be posted along each street frontage of the site for not less than (30) calendar days after the date of issuance. Failure to comply will result in the issuance of a Violation.



TO ANONYMOUSLY REPORT UNSAFE CONDITIONS AT THIS WORK SITE, CALL 311 or 911.



Demolition Permit

Permit Number DP-2024-000397

LOCATION OF WORK

4200 CHESTER AVE, Philadelphia, PA 19104-4416

There are two parcels here but they have built a structure around and combined them. 4202 will be filed on a separate permit.

PERMIT FEE

\$1,226.50

DATE ISSUED

6/19/2024

ESTIMATED COST

\$124,000.00

DISTRICT

SOUTH

PERMIT HOLDER

EB4200 LLC, SG4200 LLC

4200 CHESTER AVE PHILADELPHIA, PA 19104-

CONTRACTOR

Carmen Scialabba

FIRST CALL DEMO AND CLEAN OUTS 1114 CANTRELL ST PHI

TYPE OF WORK

Minor Demolition

APPROVED SCOPE OF WORK

FOR THE COMPLETE DEMOLITION OF THE EXISTING THREE (3) STORY MASONRY STRUCTURE. ALL PERMITTED DEMOLITION ACTIVITY TO BE DONE IN ACCORDANCE WITH SITE SAFETY DEMOLITION PLAN AND SUCH PLAN TO BE MAINTAINED ON SITE AT ALL TIMES. DEMOLITION TO BE DONE BY MECHANICAL AND HAND TOOLS SEQUENCE AS PER PLANS. PROTECTION OF PEDESTRIANS, PUBLIC RIGHT-OF-WAY, AND ADJACENT PROPERTIES TO BE IN PLACE PRIOR TO START OF WORK. SEPARATE STREETS DEPARTMENT APPROVAL REQUIRED FOR RIGHT-OF-WAY ENCROACHMENT OR CLOSURE. **DEMOLITION TO OCCUR SIMULTANEOUSLY WITH 4200 CHESTER AVE. ** ASBESTOS ABATEMENT REQUIRED PRIOR TO START OF WORK. **



CONDITIONS AND LIMITATIONS:

- Permits, including Zoning Permits **not** involving development, shall expire if the authorized work or use is not commenced within, or if work is suspended or abandoned for period of, **six (6) months from the date of issuance** with the following exceptions:
 - **30-days or 10-days** for Permits related to Unsafe or Imminently Dangerous properties respectively.
 - **3-years** from issuance or date of decision by ZBA for Zoning Permits involving development
 - **60-days** for Plumbing, Electrical or Fire Suppression Rough-In Approvals.
 - Any Permit issued for construction or demolition is valid for no more than **five (5) years**.
- All provisions of the Philadelphia Code must be complied with, whether specified herein or not. This permit does NOT constitute approval of any Violation of such Code.
- The issuance of this CO/permit does not affirm that the subject property is federally compliant with the Americans with Disabilities Act. Owner remains responsible for ensuring property complies with all local, state and federal requirements.

Demolition Permit

Permit Number DP-2024-000397

This permit requires the following inspections. Inspections may be requested by calling (215)255-4040.

CODE	DESCRIPTION
014	Initial Site Safety Inspection
756	Final Demolition Inspection
808	Demolition Progress Inspection
926	Notice Distribution Posting Inspection



RIGHT OF ENTRY: SECTION A-401 AUTHORIZES THE DEPARTMENT TO INSPECT THE CONSTRUCTION ASSOCIATED WITH THIS PERMIT. The Department may charge a Reinspection Fee if: (1) the work has not been performed in accordance with the Code; (2) the work is not ready for inspection; or (3) access to the work to be inspected is not provided.

This permit is subject to the following conditions.

CONDITIONS



Tax Exemption(Abatement): Information and applications for Real Estate Tax Abatement for new construction and improvements available from the Office of Property Assessment www.phila.gov/opa, 215-686-4334, 601 Walnut St., 300W, Phila, PA 19106. Applications for new construction and commercial improvements due within 60 days of permit issuance. Residential rehab and builder/developer applications due by Dec 31 of year of permit issuance.



Notice of Demolition Permit

Permit Number DP-2024-000400

LOCATION OF WORK

4202 CHESTER AVE, Philadelphia, PA 19104-4416

PERMIT FEE

\$996.50

DATE ISSUED

6/19/2024

ESTIMATED COST

\$100.00

DISTRICT

SOUTH

PERMIT HOLDER

EB4200 LLC, SG4200 LLC

4202 CHESTER AVE PHILADELPHIA, PA 19104-

CONTRACTOR

Carmen Scialabba

FIRST CALL DEMO AND CLEAN OUTS 1114 CANTRELL ST PHI

TYPE OF WORK

Minor Demolition

OWNER CONTACT 1

OWNER CONTACT 2

APPROVED SCOPE OF WORK

FOR THE COMPLETE DEMOLITION OF THE EXISTING THREE (3) STORY MASONRY STRUCTURE. ALL PERMITTED DEMOLITION ACTIVITY TO BE DONE IN ACCORDANCE WITH SITE SAFETY DEMOLITION PLAN AND SUCH PLAN TO BE MAINTAINED ON SITE AT ALL TIMES. DEMOLITION TO BE DONE BY MECHANICAL AND HAND TOOLS SEQUENCE AS PER PLANS. PROTECTION OF PEDESTRIANS, PUBLIC RIGHT-OF-WAY, AND ADJACENT PROPERTIES TO BE IN PLACE PRIOR TO START OF WORK. SEPARATE STREETS DEPARTMENT APPROVAL REQUIRED FOR RIGHT-OF-WAY ENCROACHMENT OR CLOSURE. **DEMOLITION TO OCCUR SIMULTANEOUSLY WITH 4200 CHESTER AVE. ** **ASBESTOS ABATEMENT REQUIRED PRIOR TO START OF WORK.**



POST A TRUE COPY OF THIS NOTICE IN A CONSPICUOUS LOCATION ON THE PREMISES

Permits must be posted for the entire time work approved herein is performed. Zoning Permits shall be posted along each street frontage of the site for not less than (30) calendar days after the date of issuance. Failure to comply will result in the issuance of a Violation.



TO ANONYMOUSLY REPORT UNSAFE CONDITIONS AT THIS WORK SITE, CALL 311 or 911.



Demolition Permit

Permit Number DP-2024-000400

<p>LOCATION OF WORK</p> <p>4202 CHESTER AVE, Philadelphia, PA 19104-4416</p>	<p>PERMIT FEE</p> <p>\$996.50</p> <p>ESTIMATED COST</p> <p>\$100.00</p> <p>DISTRICT</p> <p>SOUTH</p>	<p>DATE ISSUED</p> <p>6/19/2024</p>
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PERMIT HOLDER

EB4200 LLC, SG4200 LLC

4202 CHESTER AVE PHILADELPHIA, PA 19104-

CONTRACTOR

Carmen Scialaboa

FIRST CALL DEMO AND CLEAN OUTS 1114 CANTRELL ST PHI

TYPE OF WORK

Minor Demolition

APPROVED SCOPE OF WORK

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CONDITIONS AND LIMITATIONS:

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 - **60-days** for Plumbing, Electrical or Fire Suppression Rough-In Approvals.
 - Any Permit issued for construction or demolition is valid for no more than **five (5) years**.
- All provisions of the Philadelphia Code must be complied with, whether specified herein or not. This permit does NOT constitute approval of any Violation of such Code
- The issuance of this CO/permit does not affirm that the subject property is federally compliant with the Americans with Disabilities Act. Owner remains responsible for ensuring property complies with all local, state and federal requirements.

Demolition Permit

Permit Number DP-2024-000400

This permit requires the following inspections. Inspections may be requested by calling (215)255-4040.

Special Inspections are required for the work proposed for this Permit. Contractor shall notify all Special Inspection Agencies retained by the Permit Holder prior to commencement of any work requiring Special Inspections per the Special Inspections Duties and Responsibilities Agreement Form.

CODE	DESCRIPTION
014	Initial Site Safety Inspection
756	Final Demolition Inspection
808	Demolition Progress Inspection
926	Notice Distribution Posting Inspection



RIGHT OF ENTRY: SECTION A-401 AUTHORIZES THE DEPARTMENT TO INSPECT THE CONSTRUCTION ASSOCIATED WITH THIS PERMIT. The Department may charge a Reinspection Fee if: (1) the work has not been performed in accordance with the Code; (2) the work is not ready for inspection; or (3) access to the work to be inspected is not provided.

This permit is subject to the following conditions.

CONDITIONS



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