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..Title
WYRE Lease Agreement – For the purpose of approving the lease for certain City-owned property at 25 Silopanna Road for the use and maintenance of a radio tower, radio station, radio operations and transmitter space; and matters generally relating to said lease.

..Body

**CITY COUNCIL OF THE
City of Annapolis**

Ordinance 35-16

Introduced by: Mayor Pantelides

Referred to
Finance
Rules and City Government

AN ORDINANCE concerning

WYRE Lease Agreement

FOR the purpose of approving the lease for certain City-owned property at 25 Silopanna Road for the use and maintenance of a radio tower, radio station, radio operations and transmitter space; and matters generally relating to said lease.

WHEREAS, the City is the fee simple owner of an improved parcel of land located at 25 Silopanna Road, Annapolis, Maryland and as more accurately described in a deed recorded at Liber 4881, folio 076 among the Land Records of Anne Arundel County; and

WHEREAS, the Tenant, under the different legal names of Silver Queen Broadcasting Corporation and Bay Broadcasting Corporation, leased a building on the Property for signal transmission of a radio station known as WYRE, including a transmission operations room and a tower pursuant to a series of lease agreements and amendments dating back to 1999; and

WHEREAS, the Tenant wishes to lease the Property for the use and maintenance of a radio station, radio tower, radio operations and transmitter; and

WHEREAS, the parties desire to enter into this Lease that defines the rights, duties and liabilities of the parties; and

WHEREAS, Article III, Section 8 of the Charter of the City of Annapolis requires the passage of an ordinance to authorize the lease; and

1
2 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS**
3 **CITY COUNCIL** that the Lease Agreement, a copy of which is attached hereto and
4 made a part hereof, between Elixir Enterprises Corporation and the City of Annapolis for
5 the lease of certain municipal property, is hereby approved and authorized.
6

7 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
8 **ANNAPOLIS CITY COUNCIL** that in accordance with Article III, Section 8 of the
9 Charter of the City of Annapolis, the proposed lease of City-owned property will better
10 serve the public need for which the property was acquired.
11

12 **SECTION III: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY**
13 **THE ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date
14 of its passage.
15

16 **EXPLANATION**

17 CAPITAL LETTERS indicate matter added to existing law.

18 ~~Strikethrough~~ indicates matter stricken from existing law.

19 Underlining indicates amendments
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CITY OF ANNAPOLIS LEASE AGREEMENT

This Lease Agreement (“Lease”) is made this _____ day of _____ 2016, by and between the City of Annapolis, a municipal corporation of the State of Maryland (“City”), and Elixir Enterprises Corporation, a Maryland corporation, its successors and assigns (collectively, the “Tenant”).

WHEREAS, the City is the fee simple owner of an improved parcel of land located at 25 Silopanna Road, Annapolis, Maryland and as more accurately described in a deed recorded at Liber 4881, folio 076 among the Land Records of Anne Arundel County (collectively, the “Property”); and

WHEREAS, the Tenant, under the different legal names of Silver Queen Broadcasting Corporation and Bay Broadcasting Corporation, leased a building on the Property for signal transmission of a radio station known as WYRE, including a transmission operations room and a tower (collectively, the “Premises”) pursuant to a series of lease agreements and amendments dating back to 1999; and

WHEREAS, the Tenant wishes to lease the Premises for the use and maintenance of a radio station, radio tower, radio operations and transmitter; and

WHEREAS, the parties desire to enter into this Lease that defines the rights, duties, and liabilities of the parties.

NOW, THEREFORE, in consideration of the mutual promises and covenants of this Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Tenant agree as follows:

1. TERM

The City leases to the Tenant and the Tenant hereby leases from the City the Premises for a Term commencing on the date of City Council approval and terminating on June 30, 2017 (the “Original Term”), unless terminated earlier in accordance with the terms of this Lease.

2. USE OF PREMISES

a. The Tenant may use and occupy the Premises during the Term of this Lease only for the sole purpose of the use and maintenance of a radio station, radio tower, radio operations and transmitter used for a radio station known as WYRE in accordance with the hours and conditions granted and approved by the Federal Communications Commission (collectively, the “Radio Station”), and for no other purpose whatsoever. The space on the Property leased to Chesapeake Children’s Museum, Inc. is expressly and specifically excluded from this Lease.

1 b. The Tenant accepts the Premises in “as is” condition. The City makes no
2 representation or warranty with respect to the condition or state of the land, the Property,
3 or the Premises, or its fitness for any particular use, and the City shall not be liable for
4 any latent or patent defect thereon. Unless as otherwise expressly provided in this Lease,
5 the City does not make, and specifically disclaims, any representations, warranties or
6 covenants of any kind or character, express or implied, with respect to the nature,
7 condition, economical, functional, environmental or physical condition of the Premises.

8
9 c. The Tenant shall not use or occupy or permit the Premises or the Property
10 to be used or occupied in a manner which would in any way (1) violate any of the terms
11 of this Lease; (2) make it difficult for either the City or the Tenant to obtain fire or other
12 insurance required by this Lease at standard rates; (3) cause or create a public or private
13 nuisance in or on the Premises or the Property; or (4) tend to impair or interfere with the
14 character, reputation or appearance of the Premises or the Property.

15 16 3. RENT

17
18 a. As annual rent for the Premises, the Tenant shall pay unto the City Twenty
19 Thousand Four Hundred Dollars and No Cents (\$20,400.00) payable in equal monthly
20 installments of One Thousand Seven Hundred Dollars and No Cents (\$1,700.00)
21 (collectively, the “Rent”). Each payment shall be made promptly when due, in advance,
22 on the first day of each month, without deduction, setoff or counterclaim whatsoever, and
23 without demand. All payments shall be made payable to the “City of Annapolis” and
24 shall be sent or delivered to the Finance Director, Finance Department, City Hall, 160
25 Duke of Gloucester Street, Annapolis, Maryland 21401.

26
27 b. The Tenant shall also pay as additional rent all sums, taxes, assessments,
28 costs, expenses and other payments which the Tenant under any of the provisions of this
29 Lease assumes or agrees to pay (the “Additional Rent”), and in the event of any
30 nonpayment thereof, the City shall have all the rights and remedies provided in this Lease
31 and/or by law or at equity.

32
33 c. Except as otherwise provided for in this Lease, any Additional Rent shall
34 be due and payable thirty (30) calendar days after receipt of notice of amount due and
35 payable. All payments shall be made payable to the “City of Annapolis” and shall be sent
36 or delivered to the Finance Director, Finance Department, City Hall, 160 Duke of
37 Gloucester Street, Annapolis, Maryland 21401.

38
39 d. In the event the Rent or Additional Rent under this Lease, or any part
40 thereof, shall remain unpaid for a period of five (5) business days after the day on which
41 it is due, then in addition to all other sums due by the Tenant under this Lease, the Tenant
42 shall pay the City as Additional Rent: (1) late fees equal to five percent (5%) of the
43 unpaid amount, and (2) if an action of any type is filed in any court, reasonable attorneys
44 fees.

45

1 4. QUIET ENJOYMENT

2

3 The Tenant may peaceably and quietly have, hold and enjoy the Premises for the
4 Term of this Lease subject, however, to the terms of this Lease and compliance with
5 these terms.

6

7 5. UTILITIES, SERVICES

8

9 a. The Tenant shall, at its sole cost and expense, be responsible for the
10 furnishing of all utilities, including gas, electricity, light, heat, steam, power, water and
11 sewer, or other services used in connection with the operation of the Premises, and the
12 Tenant agrees to pay all charges therefore directly, to the applicable public utility or
13 governmental authority furnishing such service to the Premises.

14

15 b. The Tenant, at its sole cost and expense, shall arrange and pay for any
16 telephone, internet, cable, and similar services, including any necessary
17 telecommunications build-out of the Premises. The Tenant shall not arrange or pay for
18 any build-out of any telecommunications without the prior written consent of the City.

19

20 c. The Tenant, at its sole cost and expense, shall arrange and pay for any
21 housekeeping services and janitorial work that are necessary for the operation of the
22 Premises (other than space rented to other tenants), including, but not limited to, cleaning
23 any and all bathroom facilities, cleaning windows and floors, and all other general and/or
24 routine janitorial maintenance.

25

26 d. The Tenant, at its sole cost and expense, shall arrange and pay for all trash
27 and recycling removal and disposal on the Premises.

28

29 e. The Tenant, at its sole cost and expense, shall arrange and pay for routine
30 grounds maintenance of the Premises, including adjacent to the building and radio tower.

31

32 6. ALTERATIONS

33

34 a. The Tenant shall not make or cause to be made any alterations, additions,
35 or improvements to the Premises without obtaining the prior written consent of the City
36 that may be withheld in the City's sole and absolute discretion. All work done in
37 accordance with any approved alterations, additions, or improvements shall be done in a
38 good and workmanlike manner, by professionals licensed in the State of Maryland, in
39 compliance with any necessary governmental permits and other approvals, and in
40 accordance with all applicable laws and ordinances of any public authority having
41 jurisdiction over the Premises.

42

43 b. The Tenant shall retain ownership of all of its trade and business
44 equipment and furnishings from time to time installed on the Premises. The Tenant may
45 remove any such fixtures, equipment or furnishings at any such time during the Term and
46 shall remove all of it prior to the expiration of the Lease. Removal shall not cause any

1 damage to the Premises or the Property. The Tenant shall pay for any damages it may
2 cause, which shall be due and payable by the Tenant within thirty (30) calendar days of
3 City invoicing. Any such property not removed at the expiration of the Term shall be
4 deemed abandoned and, at the election of the City, shall become the property of the City
5 without payment of any kind to the Tenant, without increasing the City's liability to the
6 Tenant, and for any disposition of it the City decides to make.

7

8

7. REPAIRS AND MAINTENANCE

9

10 a. The Tenant, at its own cost and expense, shall keep and maintain the
11 Premises and any appurtenances to the Premises (other than space rented to other tenants)
12 in good order and condition, and cause no waste or damages thereto. At the expiration of
13 this Lease, the Tenant shall surrender the Premises broom clean and in the same order
14 and condition in which they were on the commencement date, ordinary wear and tear
15 accepted.

16

17 b. Prior to the Tenant repairing, replacing or otherwise altering any aspect of
18 the Premises or the Property, the Tenant shall provide the City with thirty (30) calendar
19 day prior written notice specifying the need for and nature of any and all such repairs,
20 replacements or alternations, and providing the City with a copy of all applicable
21 contracts or agreements with any third party hired by the Tenant to perform such repairs,
22 replacements or alterations. The Tenant or its contractors shall not start or undertake any
23 such repairs, replacements or alterations without the prior written approval of the City,
24 and without first obtaining all necessary permits and governmental approvals. Such
25 repairs, replacements or alterations shall be made and rendered by professional
26 contractors licensed in the State of Maryland, and shall comply in all respects with all
27 applicable federal, state, local and City laws, ordinances and regulations, including, but
28 not limited to, zoning, building and fire code requirements.

29

30 c. If the City is required to make any repairs to such portions of the Premises
31 by reason, in whole or in part, of the negligent or willful act or failure to act by the
32 Tenant or the Tenant's employees, agents, contractors, guests or invitees, the City may
33 collect the cost of any and all such repairs from the Tenant as Additional Rent, which
34 shall be due and payable by the Tenant within thirty (30) calendar days of City invoicing.

35

36 d. The City shall have no liability to the Tenant by reason of any
37 inconvenience, annoyance, interruption, or injury to business or other use or occupancy
38 arising from making any repairs or changes that the City is required or permitted to make
39 in or to any portion of the Premises or the Property, or the common areas, by any other
40 tenant's lease, or by law.

41

42

8. SIGNS

43

44 The Tenant shall not to place or maintain any sign, billboard, marquee, awning,
45 decoration, placard, lettering, advertising matter or other thing of any kind, whether
46 permanent or temporary, on the exterior of the Premises or on the glass or any window or

1 door of the Premises, without first obtaining the City's written consent. The Tenant shall
2 maintain any sign, billboard, marquee, awning, decoration, placard, lettering or
3 advertising matter or other thing of any kind, as may be approved by the City, and shall
4 repair and replace when necessary to keep in good condition and repair at all times.

5 6 9. DRIVEWAYS, FOOTWAYS AND PARKING AREAS

7
8 a. The Tenant's employees, agents, contractors, clients, guests, and invitees
9 shall be entitled to the non-exclusive use, free of charge, but in common with others, of
10 the driveways, footways and parking areas within the Property, subject to any rules and
11 regulations as the City may, from time to time, require.

12
13 b. Except for purposes of the Tenant complying with Section 5(e) of this
14 Lease, the City shall at all times have full and exclusive control, management and
15 direction of all driveways, footways and parking areas. The City may restrict access to,
16 temporarily close, construct, adjust, reduce or perform such other acts to all or any
17 portion of the parking areas or the facilities as the City determines to be necessary or
18 appropriate.

19
20 c. The City shall have the right, but not the duty, to police all driveways,
21 footways and parking areas.

22 23 10. NON-DISCRIMINATION

24
25 a. The Tenant shall not discriminate against any person with regard to
26 membership policies, employment practices, or in the provision of or access to services
27 based on race, color, religion, national origin, ancestry, sex, age, or disability.

28
29 b. This provision shall not be construed to prevent the Tenant from rendering
30 services pursuant to this Lease to categories of individuals with specific needs.

31 32 11. CITY RIGHTS

33
34 a. Upon reasonable prior notice from the City to the Tenant, the City shall
35 have the exclusive right to use all or any part of the roof and rear and side walls of the
36 Premises for any purpose; to erect additional stories or other structures over all or any
37 part of the Premises or the Property; and to erect and maintain in connection with the
38 construction thereof, temporary scaffolds and other aids to construction on the exterior of
39 the Premises. In such event, the City may temporarily and reasonably limit or restrict
40 access to the interior of the Premises.

41
42 b. Upon reasonable prior notice from the City to the Tenant, the City shall
43 have the right to use the Premises and the Property for all purposes, as long as such use
44 does not preclude the Tenant's reasonable use of the Premises, including the Tenant's
45 radio transmissions, as described herein.

46

1 12. ASSIGNMENT

2
3 The Tenant shall not assign or sublet this Lease, or permit other persons to occupy
4 the Premises, or grant any license or concession for the Premises without the prior written
5 approval of the City.

6
7 13. SECURITY, PROPERTY LOSS DAMAGE

8
9 a. The Tenant assumes all risks associated with the security of the Premises
10 (other than space rented to other tenants) and the Property. The City shall have no
11 obligation or duty with regard to security. The Tenant shall police, light and maintain the
12 Premises (other than space rented to other tenants) and the Property in a clean, safe and
13 secure manner.

14
15 b. The Tenant shall not under any circumstances issue any no trespass
16 notices, whether oral or written, or exclude any individual from the Premises or the
17 Property for any reason, except to prevent a crime from being committed on the Premises
18 or the Property. If the Tenant desires to issue any no trespass notices or exclude any
19 individual from the Premises and/or the Property, the Tenant shall send a written request
20 to the City and the City shall make the ultimate decision how and if to act on this request.

21
22 c. The City, its elected officials, appointees, directors, employees, agents,
23 contractors and representatives (the "Indemnified Parties") shall not be liable for any
24 damage to property of the Tenant or of others located on the Premises or entrusted to its
25 or their employees nor for the loss of any property by theft or otherwise, nor for any
26 injury or damage to persons or property resulting from theft, casualty, acts of God, fire of
27 every nature and type, the accumulation of snow or ice, explosion, falling plaster, steam,
28 gas, electricity, wind, water, rain or snow which may overflow or leak or be discharged
29 from any part of the Premises or the Property, or from the pipes, appliances or plumbing
30 works of the same or from the street or subsurface or from any other place, or from
31 dampness, or from any other cause whatsoever; nor shall the City be liable for any such
32 damage caused by other tenants or persons in the Premises or the Property, or for damage
33 caused by operations in construction of any public or quasi-public works. All property of
34 the Tenant kept or stored on the Premises shall be so kept at the risk of the Tenant only
35 and the Tenant shall indemnify, defend and hold the Indemnified Parties harmless from
36 any claims arising out of damage to the same, including subrogation claims by the
37 Tenant's insurance carrier.

38
39 14. COMPLIANCE WITH LAWS

40
41 a. The Tenant, at its sole cost and expense, shall keep in force all licenses,
42 consents and permits necessary for the lawful use of the Premises for the purposes of this
43 Lease. The Tenant, at its sole cost and expense, shall promptly comply with and do all
44 things required by any notice served upon it or upon the City in relation to the Premises
45 or any part thereof, from any of the departments or agencies of the City, a county, the
46 State of Maryland, or the United States, if the same shall be caused by the Tenant's use of

1 the Premises. The Tenant shall pay all costs, expenses, claims, fines, penalties, and
2 damages that may in any manner arise out of the failure of the Tenant to comply.

3
4 b. The Tenant shall be solely responsible for the acquisition of all permits
5 and any other items necessary for the transmittal of radio frequencies from and the use of
6 the Radio Station at the Premises.

7
8 15. INSURANCE

9
10 a. The Tenant, at its sole cost and expense, shall maintain in full force and
11 effect during the Term of this Lease, and any Renewal Term, the following insurance
12 coverages insuring against claims that may arise from or in connection with the Tenant's
13 operation and use of the Premises.

14
15 1. Commercial General Liability Insurance Policy, including
16 contractual liability and property liability insurance for the Premises, written on an
17 occurrence basis, in adequate quantity to protect against legal liability arising out of this
18 Lease, but no less than \$100,000.00 per person and \$300,000.00 per occurrence in the
19 aggregate, using a Combined Single Limit for bodily injury and property damage.

20
21 2. Workers' Compensation as required by Maryland law and, when
22 required, the U.S. Longshoremen's and Harbor Workers' Compensation Act, including
23 standard Other States coverage; Employers' Liability coverage with limits of at least
24 \$100,000.00 each accident, \$100,000.00 each employee disease, and \$500,000.00 disease
25 policy limit.

26
27 b. On all Commercial General Liability Insurance policies, the City, its
28 elected officials, appointees, directors, employees, agents, contractors and representatives
29 shall be named as additional insureds, which shall be shown on insurance certificates
30 furnished to the City.

31
32 c. Such policy or policies of insurance shall contain a provision by which the
33 insurer waives any right of subrogation against the City arising out of any loss covered by
34 such insurance.

35
36 d. The City shall not be liable to the Tenant for any damage to the Tenant's
37 property caused by the negligence or intentional acts of any other tenant in the Premises,
38 or caused by any condition existing on or emanating from the property of any other
39 tenant which is caused by such tenant or any of its agents or contractors.

40
41 e. The Tenant shall insure and protect itself against injury, loss or damage to
42 its property arising from any cause whatsoever, including omission, fault, negligence or
43 other conduct of the City, through procurement of insurance coverage, without subjecting
44 the City to liability to the Tenant for any injury, loss or damage which may be insured
45 against, and further, without subjecting the City to subrogation claims of any insured.
46

1 f. The Tenant shall submit to the City, simultaneously with the execution of
2 this Lease, Certificates of Insurance evidencing the coverage required by this Lease
3 before commencing the Term of this Lease. Such certificates shall provide that the City
4 be given at least thirty (30) calendar days prior written notice of any cancellation of,
5 intention not to renew, or material change in coverage.

6
7 g. The Tenant's insurance policy or policies shall not relieve the Tenant of
8 any of its responsibilities or obligations under this Lease or for which the Tenant may be
9 liable by law or otherwise.

10
11 h. The Tenant's insurance policy or policies shall be issued by an insurance
12 company(s) authorized to do business within the State of Maryland.

13
14 i. The required insurance shall be primary to any other valid and collectable
15 insurance.

16
17 j. The Tenant's failure to provide and continue in force the insurance policy
18 or policies required by this Lease shall constitute a material breach of this Lease and shall
19 operate as an immediate termination of this Lease.

20 21 16. INDEMNIFICATION

22
23 a. The Tenant shall be solely responsible for any and all injuries and
24 damages to persons and property resulting from any breach or default of this Lease by the
25 Tenant, or any negligent or intentional act or omission by the Tenant in carrying out the
26 terms of this Lease or otherwise arising from this Lease.

27
28 b. The Tenant shall indemnify, defend and hold the Indemnified Parties
29 harmless from and against all liability for injuries to persons, including death, and
30 damage to the Premises or the Property arising from acts or omissions of the Tenant, its
31 officers, agents, employees, contractors, patrons, volunteers, guests or invitees resulting
32 in connection with this Lease. The Tenant shall also indemnify, defend and hold the
33 Indemnified Parties harmless from and against any and all liabilities, claims, suits, or
34 demands which may be made against the Indemnified Parties by any third party arising
35 from the alleged violation of any third party's trade secrets, proprietary information,
36 trademark, copyright, patent rights, or other intellectual property rights, or from the
37 alleged violation of unfair competition, defamation, invasion of privacy, anti-
38 discrimination laws or regulations, or any other right of any person or entity in
39 connection with the Tenant's use of the Premises or the Property under this Lease.

40
41 c. The Tenant's indemnifications include reasonable attorney fees and costs
42 incurred by the City in defending any claims, complaints, causes of action, lawsuits, or
43 other such actions.

44
45 d. The City, in its sole discretion, may participate in handling its own defense
46 or exclusively handle its own defense, and select its own attorneys, including the City

1 Attorney. The indemnification for attorney fees applies whether or not the City Attorney
2 or other attorney handles the defense.

3
4 e. Tenant indemnification does not limit any immunity which the
5 Indemnified Parties are entitled to assert, and includes all costs and expenses, including
6 attorney's fees, whether or not related to administrative or judicial proceedings.

7
8 f. The Tenant shall reimburse the City, within thirty (30) calendar days after
9 invoicing for such reimbursement, for any damage to the Premises or the Property caused
10 by the negligence or willful misconduct of the Tenant, its officers, agents, employees,
11 contractors, patrons, volunteers, guests or invitees.

12 13 17. IMPAIRMENT OF THE CITY'S TITLE

14
15 The Tenant shall not have the right, power, or permission to do any act or to make
16 any agreement that may create, give rise to, or be the foundation for, any right, title,
17 interest, lien, charge, or other encumbrance on the estate of the City in the Premises or
18 the Property. The Tenant shall not permit any part of the Premises or the Property to be
19 used by any person or persons or by the public at any time or times during the Term of
20 this Lease, in such manner as might tend to impair the City's title to or interest in the
21 Premises or the Property, or in such manner as might make possible a claim or claims of
22 adverse use, adverse possession, prescription, dedication, or other similar claims of, in,
23 to, or with respect to the Premises or the Property.

24 25 18. LIENS AND ENCUMBRANCES

26
27 a. The Tenant shall not permit any liens for labor or materials to attach to the
28 Premises or the Property as a result of the improvements made or constructed upon the
29 Premises or the Property by the Tenant and if such liens do attach, the Tenant shall
30 immediately cause such liens to be discharged of record or bonded for the full amount of
31 the lien. Failure of the Tenant to discharge or bond for the full amount of any lien with
32 thirty (30) calendar days of receipt of notice thereof shall be cause for the City, at its
33 option, to immediately terminate this Lease and sue the Tenant for damages.

34
35 b. During the Term of this Lease, the Tenant shall not mortgage or encumber
36 the Premises or the Property.

37 38 19. TAXES AND ASSESSMENTS

39
40 a. The Tenant shall pay all impositions including all state, county and City
41 taxes (including real estate ad valorem, sales, use, and occupancy taxes), and assessments
42 of any kind and nature whatsoever, including all interest and penalties on them, which
43 shall or may accrue or be incurred during the Term of this Lease. The Tenant shall pay all
44 such taxes and assessments before any fine, penalty, interest, or cost may be added for
45 nonpayment, and shall furnish to the City, on request, official receipts or other
46 satisfactory proof evidencing such payment. If any tax or assessment is payable in

1 installments over a period of years, the Tenant shall be liable only for payment of those
2 installments falling due and payable during the Term, with appropriate pro-ration in case
3 of fractional years.

4
5 b. Taxes and assessments shall not be deemed to include any municipal, state
6 or federal income taxes assessed against the City, or any municipal, state or federal
7 capital levy, estate, succession, inheritance or transfer taxes of the City, or any franchise
8 taxes imposed on the City, or any income, profits or revenues tax, assessment or charge
9 imposed on the rent received as such by the City under this Lease.

10 11 20. THE CITY'S RIGHT OF ENTRY

12
13 a. The City and its employees, representatives, agents, and servants,
14 including any builder or contractor employed by the City, shall have the absolute
15 unconditional right at any and all reasonable times with prior notice to the Tenant (except
16 in the case of an emergency where no such prior notice is required) to enter the Premises
17 or the Property for any of the following purposes: (a) to inspect the Premises and the
18 Property; (b) to make such repairs and/or changes in the Premises or the Property as the
19 City may deem necessary or proper; (c) to enforce and carry out any provision of this
20 Lease; (d) for any purpose relating to the safety, protection or preservation of the
21 Premises or the Property; or (e) for any other purpose related to the enforcement of this
22 Lease.

23
24 b. The Tenant shall provide the City with a complete and current set of keys
25 to all entrances and exits to the Premises.

26
27 c. The City shall use reasonable efforts to minimize interference to the
28 Tenant's business or use of the Premises or the Property when making inspections or
29 repairs, but the City shall not be required to perform the inspections or repairs at any time
30 other than during normal working hours.

31 32 21. RESERVATION OF GOVERNMENTAL AUTHORITY

33
34 The City reserves the right at all times to exercise full governmental control and
35 regulation with respect to all matters connected with this Lease not inconsistent with the
36 terms of this Lease.

37 38 22. DEFAULTS OR BREACH

39
40 a. The occurrence of any one (1) of the following events shall constitute a
41 Default or Breach under the terms of this Lease:

42
43 1. Failure by the Tenant to make any payment of Rent, Additional
44 Rent, or any other payment required to be made by the Tenant under this Lease and the
45 Tenant fails to remedy such default within five (5) business days after any such payment
46 is due and payable.

1
2 2. Failure by the Tenant to observe or perform any of the covenants,
3 conditions or provisions of this Lease.

4
5 3. The Tenant's any general assignment or general arrangement for
6 the benefit of creditors, the filing by or against the Tenant of a petition to have the Tenant
7 adjudged a bankrupt or a petition for reorganization or arrangement under any law
8 relating to bankruptcy (unless in the case of a petition filed against the Tenant, the same
9 is dismissed within sixty (60) calendar days), the appointment of a trustee or receiver to
10 take possession of substantially all of the Tenant's property located in the Premises or the
11 Tenant's interest in this Lease where such seizure is not discharged or bonded within ten
12 (10) business days, the attachment, execution or other judicial seizure of substantially all
13 of the Tenant's interest in this Lease, where such seizure is not discharged or bonded
14 within ten (10) business days.

15
16 4. Vacating or abandonment of the Premises by the Tenant.

17
18 5. Any material misrepresentation by the Tenant to the City in
19 connection with the negotiation or execution of this Lease.

20
21 b. Upon the occurrence of a Default or Breach, the City may, after giving the
22 Tenant ten (10) calendar days written notice, proceed in the following manner:

23
24 1. Terminate this Lease and the Tenant's right to possession of the
25 Premises and with or without legal process, re-enter and take possession of the Premises
26 and remove the Tenant, any occupant and any property therefrom, without being guilty of
27 trespass or being liable to any suit, action or prosecution therefore, which liability the
28 Tenant hereby expressly waives, and without relinquishing any rights of the City against
29 the Tenant. Notwithstanding such re-entry and termination of this Lease, the Tenant shall
30 remain liable to the City for any payments or damages, including, but not limited to,
31 outstanding Rent and Additional Rent and attorneys' fees, due or sustained prior thereto;
32 or

33
34 2. Maintain the Tenant's right to possession, in which case this Lease
35 shall continue in effect, whether or not the Tenant shall have abandoned the Premises. In
36 such event, the City shall be entitled to enforce all of the City's rights and remedies under
37 this Lease, including the right to recover the Rent and Additional Rent as it becomes due
38 hereunder.

39
40 c. No act or omission by the City shall be deemed to be an acceptance of a
41 surrender of the Premises or a termination of the Tenant's liabilities under this Lease,
42 unless the City shall execute a written release of the Tenant. The Tenant's liability under
43 this Lease shall not be terminated by the execution by the City of any new lease for all or
44 any portion of the Premises or the acceptance of rent from any assignee or subtenant.

45
46 d. The City shall afford the Tenant at least thirty (30) calendar days, with any

1 reasonable extension as needed, to cure any default or breach of this Lease before
2 declaring a Default or Breach and terminating this Lease.

3 4 23. TERMINATION FOR CONVENIENCE

5
6 a. The City may terminate this Lease for convenience, for any reason, and at
7 any time by providing thirty (30) calendar days prior written notice to the Tenant. Any
8 such termination of this Lease by the City shall not discharge the Tenant from any
9 obligation it may have to the City by reason of any transaction, loss, cost, damage,
10 expense or liability which shall occur or arise (or the circumstances, events or basis of
11 which shall occur or arise) prior to such termination, whether the same be known or
12 unknown at the time of such termination.

13
14 b. If the lease between the City and Chesapeake Children's Museum, Inc. for
15 the Property should be terminated for any reason, the City, in its sole discretion, may
16 choose to terminate this Lease for convenience by providing thirty (30) calendar days
17 prior written notice to the Tenant. Any such termination of this Lease by the City shall
18 not discharge the Tenant from any obligation it may have to the City by reason of any
19 transaction, loss, cost, damage, expense or liability which shall occur or arise (or the
20 circumstances, events or basis of which shall occur or arise) prior to such termination,
21 whether the same be known or unknown at the time of such termination.

22 23 24. SURRENDER OF PREMISES

24
25 On the last day or earlier termination of this Lease, the Tenant shall vacate the
26 Premises and leave it in good condition and repair, normal wear and tear excepted. If the
27 Premises are not surrendered when required, the Tenant shall indemnify, defend and hold
28 the Indemnified Parties harmless against loss or liability resulting from the delay by the
29 Tenant in vacating the Premises, including, without limitation, any claims made by any
30 succeeding tenant or other occupant founded on such delay. Any holding over with the
31 consent of the City after the termination of this Lease shall be construed to be a tenancy
32 from month-to-month upon the same terms and conditions as provided in this Lease, to
33 the extent applicable.

34 35 25. MODIFICATION

36
37 a. This Lease sets forth the entire agreement between the parties relative to
38 the subject matter of this Lease. No representation, promise or condition, whether oral or
39 written, not incorporated herein shall be binding upon either party to this Lease. This
40 Lease shall not be waived, amended or modified except in writing and signed by the
41 authorized representative(s) of both parties.

42
43 b. No act by any representative or agent of the City, other than such a written
44 agreement and acceptance by the City, shall constitute an acceptance thereof.

45

1 26. REPRESENTATIONS AND WARRANTIES

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The Tenant represents and warrants to the City that:

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a. The Tenant is a corporation organized under the laws of the State of Maryland, qualified to do business and in good standing in the State of Maryland, and authorized to conduct the business in which it is engaged and as described in this Lease.

8

9

b. The Tenant is authorized to execute, deliver and perform this Lease.

10

11

c. The Tenant shall not violate the order of any court or governmental authority or breach any contract or other agreement by entering into this Lease.

13

14

d. There are no actions, suits, etc. pending or, to the best of its knowledge, threatened against the Tenant or which might adversely affect the Tenant's right to enter into or perform under this Lease.

17

18

e. The Tenant has been represented (or has had the opportunity to be represented) in the execution of this Lease by independent legal counsel.

20

21

f. There exists no actual or potential conflict of interest between its performance under this Lease and its engagement or involvement in any other agreement, or personal or professional activities. In the event such conflict or potential conflict arises during the Term of this Lease, or any renewal thereof, the Tenant shall immediately advise the City in writing thereof.

26

27

g. The representations set forth in the Lease shall be true and valid throughout the Term.

29

30

27. ACCESS TO RECORDS

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32

a. At any time during normal business hours with reasonable prior notice from the City, and as often as the City may deem necessary, the Tenant shall make available to and allow inspection and copying by the City, its employees or agents, of all books, records, accounts, reports, information and documentation of the Tenant related to the subject matter of this Lease, including, but not limited to, all contracts, invoices, payroll, and financial audits.

38

39

b. The Tenant shall maintain all books, records, accounts, reports, information and documentation required under this Lease for a period of at least three (3) years after the date of termination of this Lease including any renewals, except in the event of litigation or settlement of claims arising from the performance of this Lease, in which case the Tenant shall do so until three (3) years after final adjudication of such litigation or settlement of claims.

44

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1 28. REMEDIES CUMULATIVE AND CONCURRENT

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3 No remedy provided by this Lease or reserved to the City is intended to be
4 exclusive of any other remedies provided for in this Lease, and each such remedy shall be
5 cumulative, and shall be in addition to every other remedy given under this Lease, or now
6 or hereafter existing at law or in equity or by statute. Every right, power and remedy
7 given to the City shall be concurrent and may be pursued separately, successively or
8 together against the Tenant, and every right, power and remedy given to the City may be
9 exercised from time to time as often as may be deemed expedient by the City.

10

11 29. WAIVER OF REMEDIES FOR BREACH

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13 No failure or delay by the City to insist upon the strict performance of any term,
14 condition or covenant of this Lease, or to exercise any right, power or remedy consequent
15 upon a breach or default thereof, shall constitute a waiver of any such term, condition or
16 covenant or of any such breach or default, or preclude the City from exercising any such
17 right, power or remedy at any later time or times.

18

19 30. INDEPENDENT CONTRACTOR STATUS

20

21 Nothing contained in this Lease shall be construed to constitute the Tenant as an
22 agent, representative or employee of the City, or to create any relationship between the
23 parties other than landlord and tenant.

24

25 31. BINDING EFFECT

26

27 The terms of this Lease shall be binding on and enforceable against the parties
28 and their respective successors and assigns.

29

30 32. GOVERNING LAW

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32 a. In all actions arising from this Lease, the laws of the State of Maryland
33 shall govern, and the venue for all actions initiated pursuant to this Lease shall be
34 exclusively the Courts of Anne Arundel County, Maryland.

35

36 b. The parties waive jury trial in all actions initiated pursuant to this Lease.

37

38 33. RECITALS

39

40 The Recitals of this Lease are incorporated into this Lease.

41

42 34. SEVERABILITY

43

44 If any of the provisions of this Lease are declared by a court or other lawful
45 authority to be unenforceable or invalid for any reason, the remaining provisions hereof
46 shall not be affected thereby and shall remain enforceable to the full extent permitted by

1 law.

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35. SURVIVAL

Those sections in this Lease which by their nature are intended to survive, including, but not limited to, "Access to Reports", "Indemnification", "Defaults or Breach", and "Governing Law" shall survive the termination of this Lease.

36. TIME IS OF THE ESSENCE

Time is of the essence with respect to each and every provision of this Lease.

37. AUTHORIZATION

This Lease is authorized by the City Council pursuant to O-35-16.

38. NOTICE

Any notice required to be delivered shall be deemed to have been received when the notice has been sent by certified mail, return receipt, overnight carrier, or hand delivered with signed receipt to the following address and individual or such other address and/or such other individual as a party may identify in writing to the other party:

To the City: City Attorney
160 Duke of Gloucester Street
Annapolis, Maryland 21401

To the Tenant: Elixir Enterprises Corporation
c/o Richard A. Dent
4505 Dalton Road
Chevy Chase, Maryland 20815
(202) 316-8606
rad4505@yahoo.com

IN WITNESS WHEREOF, it is the intent of the parties that the Tenant has signed this Lease under seal and, further, that the parties have executed this Lease the day and year first written above.

WITNESS: ELIXIR ENTERPRISES CORPORATION

By: _____
Name: Richard A. Dent (Seal)
Title:

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ATTEST:

CITY OF ANNAPOLIS

Regina C. Watkins-Eldridge, MMC,
City Clerk

By: _____
Michael J. Pantelides, Mayor (Seal)

APPROVED FOR FINANCIAL
SUFFICIENCY:

REVIEWED AND APPROVED BY:

Bruce T. Miller, Director
Finance Department

Thomas C. Andrews, City Manager

APPROVED FOR FORM AND LEGAL SUFFICIENCY

OFFICE OF THE CITY ATTORNEY