



City of Annapolis

Signature Copy

Ordinance: O-5-18

160 Duke Of Gloucester
Street
Annapolis, MD 21401

File Number: O-5-18

Lease of the Market House - New Market House, LLC - For the purpose of authorizing the lease of the Market House to New Market House, LLC, the Master Tenant for a certain period of time, subject to certain terms, provisions and conditions; and matters generally relating to said lease.

**CITY COUNCIL OF THE
City of Annapolis**

Ordinance 5-18

**Introduced by: Alderman Arnett, Alderman Paone, Alderwoman Finlayson,
and Alderman Rodriguez**

Referred to

Economic Matters Committee

Finance Committee

Rules and City Government Committee

AN ORDINANCE concerning

Lease of the Market House - New Market House, LLC

FOR the purpose of authorizing the lease of the Market House to New Market House, LLC, the Master Tenant for a certain period of time, subject to certain terms, provisions and conditions; and matters generally relating to said lease.

WHEREAS, the City of Annapolis owns certain real property located at 25 Market Space in the City of Annapolis, Maryland commonly referred to as the Market House; and

WHEREAS, pursuant to the terms of the current tenant leases of the Market House, as of January 1, 2018 current tenants of the Market House are operating on a month to month basis; and

WHEREAS, pursuant to Article III, Section 8 of the Annapolis Charter, by RFP 17-21, the City required competitive bids for the right to lease the Market House; and

WHEREAS, New Market House, LLC has been determined to be one of two winning bidders in negotiations to lease the Market House; and

WHEREAS, the City Council expressly finds that leasing the Market House will better serve the public need for which the property was acquired; and

WHEREAS, City Charter, Article III, Section 8 requires that the lease of City property be authorized by ordinance of the City Council.

NOW, THEREFORE,

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the Lease Agreement between the City of Annapolis and New Market House, LLC, for the lease of the Market House located at 25 Market Space, Annapolis, Maryland, is attached hereto and made a part of this Ordinance, be and the same, is hereby authorized and approved.

SECTION II: AND, BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the attached Lease Agreement will serve the public need for which the Market House was acquired and developed and will be in furtherance of the Market House policies as established in Section 7.28.020 of the Code of the City of Annapolis.

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

EXPLANATION

Underlining indicates matter added to existing law.

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

ADOPTED this 12th day of February, 2018.

Aye: 5 Alderwoman Tierney, Alderwoman Pindell Charles, Alderman Rodriguez, Alderman Savidge and Alderman Arnett


Nay: 1 Alderman Paone

Out of Room: 1 Mayor Buckley

Absent: 1 Alderwoman Henson


Abstain: 1 Alderwoman Finlayson

**THE ANNAPOLIS
CITY COUNCIL**


Gavin Buckley

Date

3/8/18

ATTEST 
Regina C. Watkins-Eldridge, MMC

Date 3/8/18

CITY OF ANNAPOLIS MARKET HOUSE LEASE AGREEMENT

THIS MARKET HOUSE LEASE AGREEMENT (this "Lease") is made as of the ____ day of _____, 2018 (the "Effective Date") by and between CITY OF ANNAPOLIS, a municipal corporation of the State of Maryland (the "City") and NEW MARKET HOUSE, LLC, a Maryland limited liability company, its successors and permitted assigns (the "Tenant").

WHEREAS, the City is the fee simple owner of the property known and described as 25 Market Space, Annapolis, Maryland 21401 (the "Property"), which is improved by the "Market House" (the "Building"), all as depicted on Attachment A-4 attached hereto and incorporated herein; and

WHEREAS, the Tenant desires to lease the entirety of the Building containing approximately and collectively five thousand three hundred twenty-six (5,326) square feet, along with its common areas, including, but not limited to, restrooms, hallways, doorways, public conveniences, service areas, entrance ways and interior walkways (collectively, the "Premises"), together with a right to use, in common with others, adjoining sidewalks extending to edge of curb on the three (3) sides of the Building abutting Market Space, and extending a distance of six (6) feet beyond the edge of the eave along the side of the Building adjoining Hopkins Plaza, but excluding parking meters, bollards and chains and parking and traffic control signage, (as defined herein), and including an outdoor seating area on the sidewalk adjacent to the Building (collectively, the "Adjoining Areas"), but excluding parking meters, bollards and chains and parking and traffic control signage; and

WHEREAS, the Tenant wishes to lease the Premises from the City, and the City desires to lease the Premises to Tenant, for the purpose of operation of a market house as described in § 7.28.020 of the Annapolis City Code; 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. Demise of Premises.

The City hereby demises and lets to the Tenant and the Tenant hereby rents and leases from the City, the Premises, subject to the terms and conditions of this Lease.

2. Term.

(a) This Lease shall be for a term (the "Term") commencing on _____, 2018 (the "Effective Date") and expiring on June 30, 2023, unless renewed or sooner terminated as otherwise provided by this Lease. For purposes of this Lease, a "year" of the Lease is the twelve (12) month period ending on June 30th, except that the first year of this Lease shall begin on the Effective Date and end on the next June 30th that is at least twelve (12) months following the Effective Date.

1 (b) Provided that the Tenant is not otherwise in default hereunder as defined in
 2 Section 17 and wishes to continue to occupy the Premises, the parties ~~may mutually~~
 3 ~~agree~~ Tenant shall have the right in its sole discretion to renew this Lease for ~~up to five (5)~~ one (1)
 4 successive ~~term~~ term of five (5) years each upon the same terms and conditions herein through
 5 a ~~written amendment to this Lease, each successive term being a~~ (a "Renewal Term"). ~~If~~
 6 ~~Tenant desires")~~ **only if** all of the following terms are complied with no later than six (6) months
 7 prior to the end of the Term:

8 (i) Came into compliance for any and all City and Anne Arundel County municipal
 9 infractions received against the Premises during the Term, or timely filled a legal appeal or
 10 requested a ~~renewal of this Lease,~~ trial for any and all such City and Anne Arundel County
 11 municipal infractions; and

12 (ii) Came into compliance for any and all civil and/or criminal violations received
 13 against the Premises during the Term, or timely filled a legal appeal or requested a trial for any
 14 and all such violations.

15 If the Tenant ~~shall request a renewal, in writing,~~ not fails to comply with all of these terms
 16 prior to each Renewal Term, then the Lease shall automatically expire at the end of the then
 17 current Term or Renewal Term.

18 c. Not less than six (6) months before the end of the ~~then current~~ Lease Term, the
 19 Tenant shall tender Notice to the City of its intention not to renew this Lease, or submit a
 20 request in writing to exercise its right to renew this Lease in accordance with § 6.04.220 of the
 21 City Code.

22 d. Any additional renewals of this Lease shall be for successive term(s) of five (5)
 23 years each, and shall be mutually agreed upon through a written Notice between the City and
 24 the Tenant.

25
 26 **3. Condition of Premises.**

27
 28 Within ten (10) calendar days after the Effective Date, Tenant shall inspect the Premises
 29 and provide the City with ~~written notice~~ Notice of any conditions in the Premises that Tenant
 30 reasonably finds objectionable. The City shall have no further obligation to install or perform
 31 any improvements to the Premises after the Effective Date, except as the City and Tenant agree
 32 as a result of Tenant's inspection. If the City does not agree to any reasonable improvements
 33 requested by Tenant, then Tenant, within ten (10) calendar days after receiving the City's
 34 response, may terminate this Lease without further obligation and any deposit monies paid shall
 35 be returned to Tenant. Except for any improvements agreed to by the City, the Premises shall
 36 be delivered to the Tenant in "AS IS, WHERE IS" condition. The Tenant acknowledges that it
 37 has inspected the Premises, and that the Tenant's occupancy of the Premises shall constitute
 38 acceptance thereof as complying with all obligations of the City with respect to the condition,
 39 order and repair thereof except for improvements that the City ~~agrees~~ agreed to make as a
 40 result of Tenant's inspection. The Tenant, at its sole cost and expense, shall perform any
 41 additional work necessary to prepare the Premises for the Tenant's use and occupancy as
 42 provided by Sections 10 and 11.

43
 44 **4. Permitted Use.**

45

1 (a) The Tenant shall use and occupy the Premises for the purpose of operation of a
2 public market house as described in § 7.28.020 of the Annapolis City Code or successor
3 Code, and for no other purposes, and in accordance with the Tenant's "Business
4 Summary", attached hereto and incorporated herein as **Attachment B**. The Business Summary
5 shall only be modified through a written amendment approved by the Tenant and City Council.
6 The Tenant shall be entitled to use the Alfred A. Hopkins Plaza (the "Hopkins Plaza") and
7 adjacent to the Property, on a non-exclusive basis for purposes of conducting an Open Air
8 Market as described in § 7.28.010 of the Annapolis City Code, with the prior written approval of
9 the City, which approval may be altered or revoked at any time. The Tenant shall not block
10 public access to the Kunta Kinte Memorial situated in Hopkins Plaza. Blocking such public
11 access may result in revocation of the Tenant's right to use Hopkins Plaza.

12 (b) The Tenant shall not use or occupy the Premises or the Property, or exercise its
13 rights under this Lease, in any manner which would violate, or cause the City to violate, the
14 Deed of Preservation Easement dated December 17, 2015, attached to this Lease as
15 **Attachment C**, or any applicable law, including but not limited to the Americans With Disabilities
16 Act and any Environmental Regulations (defined in Section 4(d)), or in a manner which may
17 constitute a nuisance or a potential fire hazard. The City makes no representation as to the
18 fitness of the Premises or satisfaction of zoning, historic district, historic preservation and all
19 other government regulations and requirements with regard to the Tenant's proposed use of the
20 Premises as contemplated herein.

21 (c) The Tenant shall not commit or suffer to be committed any waste or nuisance
22 upon the Premises. The Tenant, at the Tenant's sole cost and expense, shall comply with and
23 observe (i) all ordinances, rules, regulations and requirements of all municipal, state and federal
24 and other applicable governmental authorities hereafter in force pertaining to the Premises and
25 the use thereof, including but not limited to any Environmental Regulations; and (ii) all
26 requirements and rules and regulations of any applicable insurance rating agency. Nothing in
27 this paragraph shall require the Tenant to comply with any City law or regulation
28 enacted after the Effective Date that unconstitutionally impairs the Tenant's contractual rights
29 under this Lease

30 (d) The Tenant shall not use, generate, place, store, release, discharge, transport or
31 otherwise dispose of Hazardous Substances in, on or under the Premises except in strict
32 accordance with environmental, federal, state or local laws and regulations concerning the
33 environment ("Environmental Regulations"). If the Tenant breaches the foregoing, the Tenant
34 shall give the City Notice (as defined in Section 27) of such breach and at the City's option, the
35 City (at the Tenant's expense) or the Tenant shall immediately undertake remedial action
36 in accordance with Environmental Regulations. The Tenant shall indemnify, defend and hold the
37 City, its elected officials, appointees, directors, employees, agents, and representatives
38 harmless from and against, and shall reimburse the City for, all claims, demands, causes of
39 action, losses, damages, liabilities, costs and expenses (including reasonable attorney's,
40 consultant's and expert's fees) asserted against or incurred by the City arising out of the
41 Tenant's breach of any warranty or representation or failure to comply with or perform any
42 covenant, agreement or obligation set forth in this Section 4(d). The term "Hazardous
43 Substance", as used in this Lease, shall mean any product, equipment, underground storage
44 tank, material, waste or substance (i) which requires special handling, investigation, removal,
45 transportation, closure, notification or other remedial action under any Environmental
46 Regulation, (ii) which is or becomes defined as a hazardous waste, hazardous material,
47 hazardous substance, pollutant, toxic substance or contaminant under any Environmental
48 Regulation, (iii) which is or becomes regulated or governed by any Environmental Regulation or
49 by any governmental authority, agency, department, commission, board or instrumentality of
50 any governmental entity, or (iv) which causes or threatens to cause an erosion, contamination,
51 drainage or nuisance problem on the Premises or to adjacent property, public roads or rights of

1 way or which poses or threatens to pose a hazard to the health or safety of persons on or about
2 the Premises or adjacent property. The provisions of this Section 4(d) shall survive the
3 expiration or earlier termination of this Lease.

4 (e) Tenant shall continuously, actively and diligently operate the Market House
5 throughout the whole of the Premises in accordance with the Business Summary. Tenant shall
6 be in default of the Lease if more than twenty percent (20%) of the gross floor area of the
7 Premises used for the sale of food, beverage and goods ceases to be in actual use for that
8 purpose for more than three (3) consecutive months, except for reason of fire or other casualty
9 covered by Section 19 of this Lease. For purposes of this paragraphsub-section, floor area
10 used for public restrooms shall not be included in the computation of "gross floor area."

11 (f) Tenant shall not commit waste or perform any acts or carry on any practices
12 which may injure the Building or Premises.

13 (g) Notwithstanding anything else in this Lease, the City reserves the right to
14 maintain, repair, replace and relocate the City's bollards, chains, parking meters and signage
15 located on or in the sidewalks located on the Property.

16
17 **5. Tenant's Responsibilities for Management of the Premises and the Building.**

18
19 (a) Unless otherwise provided in this Lease, the Tenant shall control all aspects of
20 use, operations and management of the Premises in accordance with this Lease, and the
21 Tenant shall operate the Premises to the best of its ability, using both paid staff and/or
22 contractors, including, but not limited to the following:

23 (i) Oversight of all operations at the Premises;

24 (ii) Quality assurance for all aspects of the Premises' common areas, and the
25 interior of the Building;

26 (iii) Procurement at Tenant's expense of all Building service contracts,
27 including, but not limited to, custodial, interior and exterior window washing/cleaning, refuse and
28 recycling collection and disposal, music system, grease collection, grease trap cleaning, and
29 pest control contracts;

30 (iv) Determination of appropriate seasonal operating and extended hours,
31 and special holiday hours for the Premises as reflected in Tenant's Business Summary;

32 (v) Development and assurance of proper security procedures for the
33 Premises; and

34 (vi) Coordination of Building repair, maintenance and alteration requirements
35 in coordination with and approval of the City as may be required in Sections 10 and 11.

36 (b) The Tenant shall be responsible for establishing and maintaining regular and
37 commercially reasonable business hours as reflected in Tenant's Business Summary, and shall
38 provide a written copy of such hours to the City for its records in a timely manner. The City
39 reserves the right to request the Tenant to alter or change the business hours, at any time,
40 provided that the City substantiates a reasonable justification for that request that does not
41 conflict with the provisions of this Lease. However, the Tenant shall not be required to accede
42 to any such City request without an amendment to this Lease.

43 (c) The Tenant shall have the right to impose such reasonable regulations governing
44 the use of the Premises by the public, except that the public restrooms must stay open and
45 accessible to the public during Tenant's business hours, and shall provide a written copy of
46 such regulations to the City for its records in a timely manner. The City reserves the right to
47 request the Tenant to alter or change any rule enacted pursuant to this Section, at any time,
48 provided that the City substantiates a reasonable justification for that request that does not
49 conflict with the provisions of this Lease. However, the Tenant shall not be required to accede
50 to any such City request without an amendment to this Lease.

1 **6. Security Deposit; Rent.**
2

3 (a) No later than the Effective Date, the Tenant shall deposit with the City's Finance
4 Director, 160 Duke of Gloucester Street, Annapolis MD, 21401, the amount of Eight Thousand
5 Dollars and No Cents (\$8,000.00) (the "Security Deposit"). The City shall have no obligation to
6 pay any interest on the Security Deposit, and may commingle it in an account with other funds.
7 The City, at its option, may apply any part of the Security Deposit towards the payment of
8 outstanding amounts due under this Lease, provided always that the Tenant's liability under this
9 Lease shall not thereby be discharged. Upon any uncured monetary default, the City may
10 request, and the Tenant shall be obligated to deposit, additional security to secure the Tenant's
11 performance under this Lease within ten (10) business days to restore the Security Deposit to
12 its original amount. If not used, the Security Deposit shall be returned to the Tenant within thirty
13 (30) calendar days after the Tenant vacates the Premises in accordance with Section 22.

14 (b) Commencing on ~~the Effective Date~~ July 1, 2018 and continuing through June 30,
15 2023, the Tenant shall pay to the City "Basic Rent" in equal monthly installments of Eight
16 Thousand Dollars and No Cents (\$8,000.00). At the beginning of each ~~any~~ Renewal Term, the
17 next Renewal Term's monthly Basic Rent shall be calculated at an amount equal to the previous
18 term's monthly Basic Rent multiplied by 1.05%, so that each subsequent ~~term's~~ Renewal Term's
19 Basic Rent increases by five percent (5%-%).

20 (c) Notwithstanding Section 6(b), Tenant shall pay no Basic Rent from the Effective
21 Date through December 31, 2018, and ~~then~~ shall pay Basic Rent in equal monthly installments
22 of Four Thousand Dollars (\$4,000.00) for a period of January 1, 2019 through June 30, 2019.

23 (d) In addition to Basic Rent, the Tenant shall pay to the City annually "Performance
24 Rent" based upon a percentage of Tenant's annual gross revenues during the Lease ~~Year~~ year.
25 The formula for determining Tenant's Performance Rent is specified in **Attachment D**. Tenant
26 agrees to pay each year's Performance Rent, without demand, deduction, recoupment or set-
27 off, not later than ~~thirty (30)~~ ninety (90) calendar days following the end of the Lease year- and in
28 accordance with Section 26(b). Tenant shall submit with each payment of Performance Rent
29 such supporting documentation as the City reasonably shall require to document gross sales by
30 Tenant and any subtenants and the computation of the payment. Tenant shall implement
31 procedures reasonably satisfactory to the City to ensure timely and proper recording and
32 accounting of all sales by Tenant and subtenants.

33 (e) Basic Rent shall be payable in monthly installments without demand, deduction,
34 recoupment or set-off (except ~~in the event of default by the City~~ as otherwise provided by this
35 Lease), in advance on the first day of each and every month.

36 (f) As used in this Lease, "Additional Rent" shall mean all amounts, costs and
37 expenses other than Basic Rent and any Performance Rent which the Tenant assumes or
38 agrees to pay to the City as provided by this Lease. In the event of nonpayment of any amount
39 of Additional Rent, the City shall have all of the rights and remedies provided for in the case of
40 nonpayment of Basic Rent. Additional Rent shall include, but not be limited to, bills or invoices
41 resulting from the following: taxes owed by Tenant but billed to the City as discussed in Section
42 7(a); jointly metered utilities as discussed in Section 9(a); Tenant's failure to make capital
43 repairs as discussed in Section 10(d); Tenant's failure to make repairs as discussed in Section
44 15(a); Tenant's failure to perform as discussed in Section 16; damages from Tenant's default as
45 discussed in Section 17(e); Tenant's abandoned personal property as discussed in Section
46 22(b); repairs needed at expiration of this Lease as discussed in Section 22(c); and damage to
47 the Premises or City property as discussed in Section 25(d). The Tenant shall pay Additional
48 Rent at such time or times as provided in this Lease or, if not otherwise provided, on the first
49 day of each and every month commencing on the Effective Date, and the Tenant's obligation to
50 pay Additional Rent shall survive the expiration or termination of this Lease. Basic Rent,
51 Performance Rent and Additional Rent are referred to collectively in this Lease as "Rent."

1 (g) All payments or installments of Rent hereunder (including attorneys' fees) shall
2 be paid to the City's Finance Director, 160 Duke of Gloucester Street, Annapolis MD, 21401.
3 Time is of the essence with respect to the Tenant's obligations to pay Rent. Any payment by
4 the Tenant or acceptance by the City of a lesser amount than is due from the Tenant to the City
5 shall be treated as a payment on account. The acceptance by the City of a payment for a lesser
6 amount with an endorsement or statement, or upon any letter accompanying such payment, that
7 such lesser amount is payment in full, shall be given no effect, and the City may accept such
8 payment without prejudice to any other right or remedy which the City may have against the
9 Tenant, unless otherwise agreed in writing by both parties.

10 (h) Except as otherwise expressly provided in this Lease, and except as permitted
11 by Section 17 for default by the City, no abatement, refund, offset, counterclaim, recoupment,
12 diminution or any reduction of Rent, charges or other compensation shall be claimed by or
13 allowed to Tenant, or any person claiming under it, under any circumstances, whether for
14 inconvenience, discomfort, interruption of business, interruption of utility services or otherwise,
15 arising from the making of alterations, changes, additions, improvements or repairs to the
16 Building or the Premises, by virtue or because of any present or future governmental laws,
17 ordinances, or for any other cause or reason.

18 19 **7. Taxes.**

20
21 (a) The Tenant shall pay all impositions including all applicable state, county and
22 City taxes (including real estate, ad valorem, personal property, sales, use, and occupancy
23 taxes), and assessments of any kind and nature whatsoever, including all interest and penalties
24 on them, which shall or may accrue or be incurred during the Term ~~of this Lease~~ and any
25 Renewal Term of this Lease. If any such impositions are billed to the City, Tenant shall pay such
26 impositions to the City as Additional Rent within thirty (30) calendar days after the City gives
27 Tenant a statement therefor with supporting documentation. The Tenant shall pay all such taxes
28 and assessments before any fine, penalty, interest, or cost may be added for nonpayment, and
29 shall furnish to the City, on request, official receipts or other satisfactory proof evidencing such
30 payment. If any tax or assessment is payable in installments over a period of years, the Tenant
31 shall be liable only for payment of those installments falling due and payable during the Term
32 and any Renewal Term, with appropriate pro-ration in case of fractional years. If Tenant's
33 leasehold estate under this Lease becomes subject to taxation to the Tenant, City agrees to
34 ~~reasonably cooperate with Tenant to modify this Lease to provide a credit against Basic Rent for~~
35 the amount of City real property taxes paid by Tenant, and the City will work with the Tenant to
36 take any appropriate steps to appeal such real property taxation and/or assessment.

37 (b) Taxes, impositions and assessments shall not be deemed to include any
38 municipal, state or federal income taxes assessed against the City, or any municipal, state or
39 federal capital levy, estate, succession, inheritance or transfer taxes of the City, or any franchise
40 taxes imposed on the City, or any income, profits or revenues tax, assessment or charge
41 imposed on the rent received as such by the City under this Lease.

42 43 **8. Insurance.**

44
45 (a) At all times during the Term and any Renewal Term, at the Tenant's sole cost
46 and expense, the Tenant shall obtain and keep in full force and effect a policy of comprehensive
47 general public liability insurance on an "occurrence" basis, naming the City, its elected officials,
48 appointees, directors, employees, agents, and representatives as additional insureds with
49 respect to the Premises and the business of the Tenant in, on, within, from or connected with
50 the Premises, for which the limits of liability shall be not less than Three Million Dollars
51 (\$3,000,000.00) with respect to injuries and/or death to any number of persons arising out of

1 one accident; One Million Dollars (\$1,000,000.00) with respect to injury and/or death of any one
2 person; and in the amount of not less than Three Million Five Hundred Thousand Dollars
3 (\$3,500,000.00) with respect to the destruction of or damage to property, including the
4 Premises. Such insurance policy shall be issued by an insurance company approved by the
5 City. Even though the City, its elected officials, appointees, directors, employees, agents, and
6 representatives are named additional insureds on the policy provided by the Tenant, such policy
7 must specifically provide for payment of damage or loss to the City when the damage to the
8 City, to its property or to its agents, contractors or employees is caused by the negligent or other
9 wrongful act of the Tenant or its contractors, employees, agents, licensees or invitees. At the
10 City's request, made no more frequently than the commencement of each Renewal Term, the
11 Tenant shall increase the amounts of coverages required by this Section 8(a) to amounts
12 reasonably satisfactory to the City taking into account inflation, changes in risks being insured,
13 and changes in commercially reasonable standards for insurance of such types.

14 (b) At all times during the Term and any Renewal Term, at the Tenant's sole cost
15 and expense, the Tenant shall insure the contents of the Premises, including, without limitation,
16 alterations, decorations, furnishings, fixtures and equipment used or installed in the Premises by
17 or on behalf of Tenant, and all personal property of the Tenant in the Premises, against loss due
18 to fire and other property risks included in standard all risk coverage insurance policies, in an
19 amount equal to the replacement cost thereof and covering loss of income from such property
20 risk. All insurance carried by the Tenant hereunder shall be primary and not contributing with
21 any insurance carried by the City.

22 (c) At all times during the Term and any Renewal Term, the Tenant shall maintain, at
23 the Tenant's sole cost and expense, worker's compensation insurance in statutory limits.

24 (d) At all times during the Term and any Renewal Term, the Tenant shall maintain, at
25 the Tenant's sole cost and expense, a flood insurance policy for all furnishings, fixtures and
26 equipment in the Premises in accordance with the U.S. Government's National Flood Insurance
27 Program, for which the limits of liability shall be not less than One Million Dollars
28 (\$1,000,000.00), and naming the City, its elected officials, appointees, directors, employees,
29 agents, and representatives as additional insureds.

30 (e) The Tenant hereby waives all claims for recovery from the City for any loss or
31 damage insured under valid and collectible insurance policies to the extent of any recovery for
32 loss insured thereunder. The policy required to be kept in force by the Tenant as provided by
33 Section 8(a) shall contain provisions whereby the insurer waives any right of subrogation
34 against the City and its contractors, agents and employees. Neither the issuance of such policy
35 or the minimum limits of coverage specified in Section 8(a) or elsewhere in this Lease shall limit
36 or restrict, or be deemed to limit or restrict in any way, the Tenant's responsibility or liability
37 arising out of its covenants under the provisions of this Lease. The insurance protection
38 afforded by the Tenant's insurance policy must be written as primary coverage and not as
39 contributing with or in excess of any coverage which the City may carry.

40 (f) Before the Tenant occupies the Premises, the Tenant shall deliver to the City one
41 (1) or more original certificates of Tenant's insurance policies required to be maintained by this
42 Section 8, together with true and complete copies of such policies and of receipts or other
43 evidences of the pre-payment of its premiums for not less than one (1) year in advance.
44 Thereafter, during the entire Lease Term and any Renewal Term, and at least thirty (30)
45 calendar days before each expiration date of each such policy, the Tenant will similarly deliver
46 an original certificate of the renewal policy to the City together with true and complete copies of
47 the renewal policies and of receipts or other evidence of the prepayment of the annual
48 premiums. Each certificate of the Tenant's insurance policies must be reasonably acceptable to
49 the City in form, substance and detail and contain an agreement by the insurer or the Tenant
50 that it will not cancel or amend the policy without giving at least thirty (30) calendar days prior
51 ~~written notice~~-Notice to the City.

1 (g) The insurance required to be maintained by the Tenant by this Section 8 may be
 2 placed under one or more "blanket policies;" provided, however, that the insurer named in each
 3 such blanket policy must certify to the City's satisfaction that the coverage required to be
 4 provided by the Tenant is separately identified and is actually provided and available to protect
 5 the Premises within the terms of the blanket policy.

6
 7 **9. Utilities.**

8
 9 (a) The Tenant shall be solely liable to pay all costs and expenses of electricity,
 10 water, sanitary sewer, heating, natural gas, air conditioning, and any other utility service used at
 11 the Premises, and for exterior lighting of the Building. The Tenant shall pay all such costs and
 12 expenses either directly to the providers of such services if the Building is separately metered
 13 therefor or, if not separately metered, to the City as Additional Rent, based on the City's
 14 reasonable proration of such costs and expenses, within thirty (30) calendar days after the City
 15 gives Tenant a statement therefor with supporting documentation. Under no circumstances shall
 16 the City be liable to Tenant in damages or otherwise (i) if any utility shall become unavailable
 17 from any public utility company, public authority or any other person or entity supplying or
 18 distributing such utility, or (ii) for any interruption in service of electricity, water, sewer, gas, heat,
 19 ventilation, or air conditioning caused by fire, accidents, strikes, breakdowns, necessary
 20 maintenance, alterations, repairs, acts of God or any other causes; and, except as permitted by
 21 Section 19, the foregoing shall not constitute a termination of this Lease, ~~provided, however,~~
 22 ~~that if such interruption or unavailability occurs and extends for more than five (5) business~~
 23 ~~days.~~ Tenant's obligation to pay Basic Rent to the City shall ~~cease and abate unless and until~~
 24 ~~said~~continue and be unabated throughout such interruption or unavailability, but Tenant may
 25 obtain business interruption insurance to protect against such interruption or unavailability
 26 ceases.

27 (b) Tenant understands and acknowledges that the heating, cooling and make-up air
 28 capacity of the Premises is provided by a geothermal system (the "Geothermal System"); and
 29 that the Geothermal sSystem provides approximately forty (40) tons of capacity, consisting of
 30 approximately thirty (30) tons of cooling capacity and ten (10) tons of dehumidification, of which
 31 five (5) tons can be used as cooling. This consists of approximately twenty-five and one-half
 32 (25.5) tons for the Building base load and people load; and the remaining fourteen and one-half
 33 (14.5) tons of ~~cooling~~ capacity is available for Tenant's installed-equipment heat load. Tenant
 34 further acknowledges that the efficiency and sufficiency of the cooling portion of the Geothermal
 35 sSystem is dependent upon Tenant not exceeding the equipment heat load and Tenant keeping
 36 all doors to the Building shut except when people are entering or leaving the Premises. Tenant
 37 agrees to use and operate the Building and Premises in a manner consistent with this
 38 Paragraphsub-section. If the efficiency and sufficiency of the Geothermal sSystem are not
 39 adequate to provide comfortable all-season temperatures and humidity in the Premises for
 40 Tenant and its customers, Tenant may supplement, replace or upgrade the Geothermal System
 41 in accordance with Section 11(a) of this Lease, and thereafter maintain, replace and repair, at
 42 its sole cost and expense, any supplementation, replacement or upgrade to the heating and
 43 ~~cooling~~ Geothermal sSystem as necessary to provide comfortable all-season temperatures and
 44 humidity in the Premises for Tenant and its customers. Any supplementation, replacement or
 45 upgrade of the existing ~~heatingheating and cooling~~ Geothermal sSystem shall be subject to prior
 46 written approval by the City, which shall not be unreasonably denied, conditioned or delayed.
 47 Any equipment, fixtures, devices, product designs, parts or indispensable accessories replaced,
 48 upgraded or otherwise installed pursuant to this sub-section shall, upon the installation thereof,
 49 become and be the property of the City and shall remain upon and be surrendered with the
 50 Premises at the termination or expiration of this Lease.

51 (c) The Tenant shall be solely liable to pay all costs and expenses for any telephone,

1 internet, cable, and similar services, including any necessary telecommunications build-out of
2 the Premises. The Tenant shall not arrange or pay for any build-out of any telecommunications
3 that penetrates the exterior wall of the Building, attaches to the exterior of the Building or
4 impacts the columns in the Building without the prior written consent of the City.

5 (d) The Tenant shall be solely liable to pay all costs and expenses for any operating
6 expenses, housekeeping services and janitorial work that Tenant reasonably deems necessary
7 for the operation of the Premises, including, but not limited to, cleaning any and all bathroom
8 facilities, cleaning windows and floors, and all other general and/or routine janitorial
9 maintenance.

10
11 **10. Repairs and Maintenance.**
12

13 (a) The Tenant, at its sole cost and expense, shall maintain, repair and replace as
14 necessary, and keep, in a clean, safe and proper operating condition, the entire interior and,
15 except as otherwise provided in ~~Paragraph~~Section 10(d), the exterior of the Premises, including
16 but not limited to all windows, doors and glass, all machinery, equipment, lighting, sump pumps,
17 grease traps, controls, ~~oil-minder pump, mechanical, electrical, plumbing, heating, ventilating,~~
18 ~~air conditioning, sprinkler, fire suppression and alarm systems and equipment, inventory and~~
19 ~~appurtenances thereof used by or for the benefit of the Tenant.~~ The Tenant shall be required to
20 perform regular maintenance of the Geothermal System for the Premises, including heating,
21 ventilating and air conditioning equipment and appurtenances thereof and any supplementation,
22 replacement or upgrade approved pursuant to Section 9(b), and to include changing filters but
23 not repairs or replacement of the Geothermal System existing as of the Effective Date or any
24 part or component thereof, including any and all elements of the Geothermal System. The
25 Tenant shall keep the Premises in good order and repair, and in a safe and clean condition, free
26 of dirt, trash, pests, and in all respects in such manner as to comply with all applicable laws and
27 regulations. Notwithstanding the foregoing, the City shall be responsible for the maintenance,
28 repair and replacement of pipes and equipment located below the concrete floor of the
29 Premises, except for grease traps, and unless necessitated by the negligence or willful wrongful
30 act or omission of Tenant, its agents, contractors, invitees or employees. The Tenant shall also
31 maintain and keep, in a ~~first-class~~clean, safe and proper condition, the Adjoining Areas, and
32 shall arrange for removal of ice and snow from the Adjoining Areas when reasonably necessary.
33 Tenant shall not take any action to interfere with, damage or destroy any of the City's bollards,
34 chains, parking meters or signage located on or in the Adjoining Areas that are Tenant's
35 responsibility to maintain.

36 (b) At the Tenant's sole cost and expense, Tenant shall enter into and maintain
37 during the entire Term and any Renewal Term service contracts with reputable third-party
38 contractors licensed and insured to maintain and monitor all mechanical, electrical, plumbing,
39 ~~sprinkler, fire suppression, alarm~~HVAC, and other systems and equipment at the Premises for
40 which Tenant is responsible as provided by Section 10(a), including but not limited to Building
41 operating systems and equipment, as described in Section 10(a). All such service contracts
42 and contractors must (i) comply with all applicable manufacturer's recommendations, (ii) be
43 terminable without penalty upon thirty (30) calendar days prior ~~written notice~~Notice, and (iii) be
44 approved by the City prior to the Tenant entering into the service contracts, which approval
45 shall not be unreasonably withheld.

46 (c) The Tenant, at its sole cost and expense, shall take commercially reasonable
47 precautions and measures to protect the Premises, including the Building and any personal
48 property therein, from flooding (collectively, "Flood Measures") prior to an impending weather
49 event reasonably expected to have flooding potential. Tenant shall coordinate with the City and
50 its staff on other protective measures to be taken, except that Tenant may not make any

1 physical alteration to the Building without the prior written approval of the City, which shall not
2 be unreasonably withheld.

3 (d) The City shall (i) maintain, repair, replace and renew the roof, foundation,
4 exterior walls, and sprinkler, fire suppression and fire alarm systems (including any approved or
5 required fire systems installed pursuant to Section 11) of the Building, and as and when
6 reasonably required; (ii) shall repair, replace and remotely monitor the HVAC-Geothermal
7 sSystem (except for such any supplementation, replacements or upgrades to the Geothermal
8 sSystem installed by Tenant pursuant to Section 9(b) of this Lease), as and when reasonably
9 required; and (iii) shall make all other capital improvements to the Property for which the
10 Tenant is not responsible to make pursuant to Section 10(a) and (b) above (the "Capital
11 Repairs"), provided that the Tenant promptly shall give the City Notice of the necessity for such
12 repairs, and further provided that the damage thereto shall not have been caused by the
13 Tenant, its agents, contractors, invitees or employees, in which event the Tenant shall be
14 responsible therefore and shall promptly repair such damage at its sole cost and expense
15 pursuant to Section 25. Capital Repairs that are the responsibility of Tenant to undertake and
16 that the Tenant does not undertake after ~~written notice~~ Notice from the City in accordance with
17 ~~Paragraph~~Section 15(a) shall be undertaken by the City and invoiced to the Tenant as
18 Additional Rent. As used in this sub-~~paragraph~~section (d), a capital improvement means the
19 addition of a permanent structural change or the restoration of some aspect of the Property that
20 will ~~either~~ enhance its overall value, increase its useful life or adapt it to a new use.

21 (e) Except as provided in this Lease, the City shall have no obligation or liability for
22 repair or maintenance of the Premises, or any part thereof, nor shall the City be under any
23 liability to repair, maintain or replace any electrical, plumbing, heating, air conditioning or other
24 mechanical installation, nor shall the City be obligated to make any improvements of any kind
25 upon the Premises, or to make any repairs, replacements or improvements to any equipment,
26 facilities or fixtures contained therein, all of which shall be the responsibility of the Tenant and
27 shall be performed as provided by Sections 10 and 11.
28

29 **11. Alterations by the Tenant.**

30
31 (a) The Tenant shall not make any alterations or improvements to the Premises
32 during the Term or any Renewal Term, unless such alterations (i) are not structural in nature
33 and do not affect the structural integrity of the Building, (ii) comply with all restrictions and/or
34 requirements of any Maryland Historic Trust easements for the Premises, (iii) are approved by
35 the City's Historic Preservation Commission, (iv) do not adversely affect the qualification of the
36 Building as an historic structure or the historic tax credits available to the City in connection
37 therewith, and (v) are performed after written approval by the City of the Tenant's specific plans
38 and specifications therefor, which approval shall not be unreasonably withheld. All alterations
39 and improvements to the Premises shall be done at the sole cost and expense of the Tenant in
40 a good and workmanlike manner, using only new or reclaimed materials and in compliance with
41 all applicable laws, codes, rules and regulations. Such alterations and improvements shall, upon
42 the installation thereof, become and be the property of the City and shall remain upon and be
43 surrendered with the Premises at the termination or expiration of this Lease. The City agrees to
44 reasonably cooperate with Tenant to process Tenant's applications for City permits for
45 alterations or improvements in a timely manner. The Tenant shall provide the City with as-built
46 drawings for all alterations and improvements made to the Premises. The Tenant shall be
47 responsible for installing and paying all costs associated with any expansion of the sprinkler, fire
48 suppression and/or fire alarm systems existing as of the Effective Date that are necessitated by
49 any alterations or improvements made by the Tenant pursuant to this sub-section.

50 (b) The Tenant shall cause all debris, rubbish and surplus materials caused by the
51 performance of its alterations and improvements to be removed from the Premises and

1 disposed of at a lawful facility as necessary or when directed by the City, but not less frequently
2 than every two (2) business days. Tenant shall not allow any such debris, rubbish and surplus
3 materials to unreasonably interfere with the operation of the Premises to the extent that the
4 Premises remain open during the making of alterations and improvements.

5
6 **12. Mechanics' and Materialmen's Liens and Other Liens.**

7
8 The Tenant shall not do or suffer to be done any act, matter or thing whereby the
9 Premises (or the Tenant's interest therein), or any part thereof, may be encumbered by any
10 mechanics' or materialmen's lien or by any other lien or encumbrance. The Tenant shall cause
11 to be canceled and discharged of record, by bond approved by the court or as otherwise
12 permitted by such court in which the claim is filed, within ten (10) business days after the date of
13 filing, any mechanics' or materialmen's liens filed against the Premises (or the Tenant's interest
14 therein), or any part thereof, purporting to be for work or material furnished or to be furnished to
15 the Tenant. The Tenant shall have no authority to encumber the City's interest in the Building or
16 the Premises, and nothing in this Lease shall be deemed or construed to make the Tenant the
17 agent of the City for the purpose of performing work in or upon, or ordering materials for, the
18 Building or the Premises.

19
20 **13. Representations of Tenant.**

21
22 The Tenant hereby represents and warrants to the City that as of the Effective Date, the
23 Tenant is a limited liability company of the State of Maryland; this Lease constitutes the legal,
24 valid and binding obligation of the Tenant enforceable in accordance with its terms; the Tenant
25 has full power and authority to enter into and perform the terms and conditions of this Lease; the
26 Tenant has obtained all necessary approvals and consents to lease the Premises from the City
27 as contemplated by this Lease; the persons executing this Lease on behalf of the Tenant is fully
28 and duly empowered and authorized to so act; and this Lease has been duly executed and
29 delivered.

30
31 **14. Release.**

32
33 The Tenant hereby waives, releases and irrevocably relinquishes any and all claims,
34 liability and causes of action, known or unknown, against the City or the City's contractors,
35 employees, agents, licensees or invitees arising during the Term and any Renewal Term in
36 connection with any damage or destruction to the property of the Tenant or of any other person
37 or entity and/or for injury or death to the person of the Tenant or of any other person or entity
38 directly or indirectly due to any cause whatsoever other than the willful misconduct or gross
39 negligence of the City or of the City's contractors, employees, agents, licensees or invitees.

40
41 **15. Inspection and Entry.**

42
43 (a) The City or its agents shall have, upon giving the Tenant at least twenty-four (24)
44 hours advance Notice (which Notice, in addition to the means set forth in Section 27, may be
45 given by telephone or orally in person) the right at all reasonable times to enter the Premises to
46 examine same and to show them, and for such other purposes as shall be necessary in the
47 reasonable exercise of the discretion of the City. The City shall not be required to give any
48 Notice to the Tenant before entering the Premises in the event of an emergency. In addition, if
49 the Tenant shall fail to make any repairs, restorations, replacements or otherwise comply with
50 the provisions of this Lease within the time specified in Section 17, then the City shall have the

1 right, but shall not be required to enter the Premises during normal business hours (or otherwise
2 in the event of an emergency) to make required repairs, restorations, replacements or fulfill the
3 other requirements hereunder and in the event the City does so act, such repairs, restorations,
4 replacements or fulfillment of other requirements shall be made by the City at the sole cost and
5 expense of the Tenant, and any costs or expenses incurred by the City shall be collectible as
6 Additional Rent and shall be paid by the Tenant after the City delivers to the Tenant a statement
7 therefor with appropriate documentation including third party invoices and receipts.

8 (b) The Tenant shall not change any locks or passwords necessary to access the
9 Building or the Premises without first providing the City with such new keys or passwords as are
10 necessary for the City to obtain such access.

11
12 **16. Tenant's Failure to Perform.**

13
14 If the Tenant shall fail, within fifteen (15) business days after the City gives the Tenant
15 Notice thereof, to keep the Premises in the state of condition and repair required by this Lease;
16 to do any act; make any payment; or perform any term or covenant on the Tenant's part
17 required under this Lease, the City may (at its option, but without being required to do so)
18 immediately, or at any time thereafter and without Notice, perform the same for the account of
19 the Tenant (including, but not limited to, entering upon the Premises at any time to make
20 repairs). Any costs incurred by the City in so performing the Tenant's obligations shall be
21 deemed Additional Rent. The City shall provide to the Tenant reasonable evidence of the costs
22 City incurred. All rights given to the City in this Section 16 shall be in addition to any other right
23 or remedy of the City herein contained.

24
25 **17. Default; Termination.**

26
27 (a
28 (a) If the Tenant shall fail to obtain a beer and wine license from the City Alcoholic
29 Beverage Control Board for the Premises as permitted by § 7.12.100.B of the Annapolis City
30 Code within four (4) months of the Effective Date, then the Tenant shall have the right to
31 terminate this Lease with thirty (30) calendar days prior Notice to the City, provided such Notice
32 is given no later than June 30, 2018. The Tenant shall surrender the Premises in accordance
33 with Section 22 of this Lease.

34 (b) (i) If the Tenant shall fail to pay any installment of Rent within five (5) business
35 days after the date such installment is due unless otherwise agreed between City and Tenant
36 on a case by case basis, or (ii) if the Tenant defaults in any of the covenants or agreements
37 herein contained, including, but not limited to, failing to strictly substantially comply with the
38 Business Summary, and not otherwise specifically provided for by this Section 17(a), which
39 default shall not be cured within fifteen (15) business days after the City gives the Tenant Notice
40 thereof, or (iii) if the Tenant shall be declared bankrupt or insolvent according to law, or shall
41 make an assignment for the benefit of creditors, or if any petition shall be filed by or against the
42 Tenant under any of the provisions of the Federal Bankruptcy Act and shall not be vacated
43 within ninety (90) calendar days thereafter, or (iv) if the Tenant vacates or abandons the
44 Premises (items (i) through (iv) are each referred to as an "Event of Tenant Default"), then the
45 City may lawfully, immediately or at any time thereafter and without Notice or demand, and
46 without liability for any damage that may be done to the property of the Tenant, enter into and
47 upon the Premises and repossess the same and declare this Lease and the tenancy hereby
48 created terminated, and expel the Tenant and those claiming under the Tenant, and the City
49 shall be entitled to the benefit of all provisions of the laws of Anne Arundel County and the
50 Public General Laws of Maryland respecting the speedy recovery of lands and tenements held
51 over by tenants or proceedings in forcible entry and detainer, and all without prejudice to any

1 remedies which might otherwise be used by the City for arrears of Rent or for any breach of the
 2 Tenant's covenants herein contained. The Tenant further agrees that notwithstanding such re-
 3 entry, the Tenant shall remain liable for any Rent or damages which may be due or sustained
 4 prior thereto, and the Tenant shall further be liable, at the option of the City, for sums of money
 5 as liquidated damages for the breach of any covenant and for all Rent due during the remainder
 6 of the Term- or any then current Renewal Term. As an alternative, the City may collect in a
 7 lump sum the balance of Rent (including Additional Rent) which would be due during the
 8 remainder of the Term or any then current Renewal Term had the Tenant not defaulted
 9 hereunder, which lump sum shall be appropriately discounted to present value using then
 10 prevailing market rates of interest. If the City relets the Premises to another tenant after an
 11 Event of Tenant Default, any amounts (net of the costs of such reletting) received from such
 12 subsequent tenant during the Term shall reduce Tenant's damages due to the City hereunder.
 13 ~~THE CITY AND THE TENANT AGREE TO AND THEY HEREBY DO WAIVE TRIAL BY JURY~~
 14 ~~IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES~~
 15 ~~HERETO AGAINST THE OTHERS ON ANY MATTERS WHATSOEVER ARISING OUT OF OR~~
 16 ~~IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF THE CITY AND~~
 17 ~~TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES AND/OR ANY CLAIM OR~~
 18 ~~INJURY OR DAMAGE, AND ANY STATUTORY REMEDY~~ or any applicable Renewal Term
 19 shall reduce Tenant's damages due to the City hereunder.

20 (bc) No assent, expressed or implied, by the City to any breach by the Tenant of any
 21 of the clauses, stipulations or covenants of this Lease shall be deemed or taken to be a waiver
 22 of, or assent to, any succeeding breach of the same clause, or stipulation or covenant, or any
 23 preceding or succeeding breach of any clause, stipulation or covenants. The Tenant hereby
 24 waives all rights of redemption to which the Tenant or any person under it may be entitled by
 25 any law now or hereafter in effect.

26 (ed) Upon the occurrence of an Event of Tenant Default, the City shall have at all
 27 times the right to distrain for Rent and other charges due and shall have a first and valid lien
 28 upon all property of the Tenant, whether or not exempt by law, for payment of the Rent and
 29 other charges herein reserved.

30 (de) All remedies granted hereunder or permitted by law shall be cumulative, and
 31 unless inconsistent, may be exercised separately or concurrently or successively.

32 (ef) From and after the occurrence of any Event of Tenant Default, the Tenant shall
 33 pay to -the City as Additional Rent, and- the City shall be entitled to collect from the Tenant, all
 34 fees, costs and expenses (including but not limited to the fees and disbursements of the City's
 35 attorneys) incurred by -the City in connection with such Event of Tenant Default.

36 (f)(g) If the City materially defaults in any of the covenants or agreements herein
 37 contained, which default shall not be cured within twenty (20) business days after Tenant gives
 38 the City Notice thereof (each referred to as an "Event of City Default"), then the Tenant may
 39 either (i) terminate this Lease with Notice to the City of such termination for cause, or (ii) receive
 40 a deduction, abatement, recoupment or set-off of Basic Rent through a Notice to the City, which
 41 Notice includes sufficient documentation evidencing damages that justify such a deduction,
 42 abatement, recoupment or set-off of Basic Rent.

43 (h) ~~THE CITY AND THE TENANT AGREE TO AND THEY HEREBY DO WAIVE~~
 44 ~~TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY~~
 45 ~~OF THE PARTIES HERETO AGAINST THE OTHERS ON ANY MATTERS WHATSOEVER~~
 46 ~~ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP~~
 47 ~~OF THE CITY AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES~~
 48 ~~AND/OR ANY CLAIM OR INJURY OR DAMAGE, AND ANY STATUTORY REMEDY.~~

49 (i) The City and the Tenant agree that this is a lease of property to be used
 50 exclusively for a business, commercial or mercantile purpose as distinguished from residence

1 purposes as provided in Real Property Article, Section 8-110 of the Annotated Code of
2 Maryland and that this Lease and the Rent herein reserved are not subject to redemption.

3 (j) Subject to all other requirements of this Lease, and regardless of how this Lease
4 expires or terminates, including but not limited to, for either party's default, failure to obtain a
5 license as permitted by § 7.12.100.B of the Annapolis City Code, or pursuant to any court order
6 or other settlement, in no event shall the Tenant be entitled to damages or other consideration
7 in excess of the amount of Rent remaining for the then-current Term or Renewal Term.

8
9 **18. Assignment and Subletting.**

10
11 (a) The Tenant shall not assign this Lease without the prior written approval of the
12 City Council, which the City Council may refuse in the City Council's sole and absolute
13 subjective discretion. As part of any approval of an assignment, the City Council may impose
14 any terms or conditions that the City Council deems appropriate. Unless otherwise expressly
15 provided by the City Council, approval of an assignment does not relieve Tenant of any
16 obligation or liability to be performed by Tenant under this Lease at any time, and Tenant shall
17 continue to be liable as principal, and not as guarantor or surety, to the same extent as if no
18 assignment had been made

19 (b) The Tenant may sublease the Premises, or a portion of the Premises, for a term,
20 including renewal terms of not more than the Term and any Renewal Term of this Lease, after
21 first obtaining in each such instance prior written consent of the City, which consent may not be
22 unreasonably withheld, conditioned or delayed. A proposed sublease shall be deemed
23 approved if the City does not respond to a request for approval within ten (10) business days
24 after the City's receipt of Tenant's written request. Any sublease must be consistent with
25 Tenant's approved Business Summary. The Tenant shall provide the City with copies of all
26 subleases in a timely manner.

27 (c) In case of any subletting or assignment, whether with or without the City's
28 consent, the Tenant shall remain fully liable under this Lease. Consent in any one instance by
29 the City shall not be deemed a waiver of the requirement that the City's consent be obtained as
30 to all subsequent assignments and subleases.

31 (d) Any assignment or sublease by Tenant in violation of this Lease shall be null and
32 void and the City shall not be obligated to recognize the assignee or sublessee claims unless
33 the City agrees otherwise in writing.

34 (e) The City may at any time make an assignment of its interest in this Lease and, in
35 the event of such an assignment, the City shall be released from any and all liability accruing
36 under this Lease after the date of the assignment, except that the City may deliver any security
37 deposit to the assignee and the City shall be released from any further liability regarding the
38 security deposit. Tenant may terminate this Lease upon thirty (30) calendar days written notice
39 upon being notified that the City has assigned its interest in this Lease.

40
41 **19. Fire or Other Casualty.**

42
43 (a) In the event of partial or total damage or destruction to the Premises by fire, other
44 casualty, or any other cause whatsoever (except condemnation), that is not the responsibility of
45 the Tenant to repair or reconstruct, (i) the Tenant promptly shall give Notice thereof to the City;
46 (ii) this Lease shall continue in full force and effect, except as otherwise provided by this Section
47 19; and (iii) the City, to the extent that funds are available to the City therefor, shall thereupon
48 cause such damage or destruction to the Premises to be repaired with reasonable speed at the
49 expense of the City, due allowance being made for reasonable delay which may arise by reason
50 of adjustment of loss under insurance policies on the part of the Tenant, and for reasonable
51 delay on account of "labor troubles" or any other cause beyond the City's control. To the extent

1 that the Premises, in whole or in part, is rendered untenable for more than five (5)
2 consecutive days, the Rent shall proportionately abate based upon the portion of the Premises
3 that are untenable until the Premises, or portion of the Premises, are restored to a condition
4 substantially similar to the condition as existed immediately prior to the damage or destruction. If
5 the damage or destruction shall be so extensive to the Building as to render it uneconomical, in
6 the City's or Tenant's reasonable opinion, to restore the Premises for the use of the Tenant as
7 specified herein or the City shall decide not to repair or rebuild the Building within a reasonable
8 period of time, this Lease, at the option of either party, shall be terminated upon Notice thereof
9 to the other party and the Rent shall, in such event, be paid to or adjusted as of the date of such
10 damage, and this Lease shall terminate upon the third (3rd) business day after such Notice is
11 given. The Tenant shall thereupon vacate the Premises and surrender the same to the City in
12 accordance with Section 22, but no such termination shall release the Tenant from any liability
13 to the City arising from such damage or from any of the obligations or duties imposed on the
14 Tenant hereunder prior to such termination.

15 (b) In no event shall the City be liable for interruption to the Tenant's business or for
16 damage to or replacement or repair of the Tenant's personal property, including inventory, trade
17 fixtures, floor coverings, furniture and other property removable by the Tenant under the
18 provisions of this Lease, unless such interruption or damage is caused by fire or other casualty,
19 or the the-gross negligence or willful misconduct of the City or the City's contractors, employees,
20 agents, licensees or invitees.

21 (c) If the Premises are substantially damaged, in the City's reasonable opinion,
22 during the last two (2) years of the Term or any Renewal Term, then in any such events, the
23 City may terminate this Lease by giving the Tenant Notice thereof within ninety (90) calendar
24 days after the occurrence of such event. Rent and other charges shall be adjusted as of the
25 date of such damage.

26 27 **20. Eminent Domain.**

28
29 If the entire Premises is condemned or taken (either temporarily or permanently) for
30 public purposes by a government entity other than the City, or if -the City shall convey the
31 Premises to any public authority in settlement of a threat of such condemnation or taking by a
32 government entity other than the City, the Rent shall be adjusted to the date of such taking or
33 conveyance, and this Lease shall thereupon terminate. If only a portion of the Premises shall be
34 so taken or condemned and, as a result of such partial taking, the Tenant is reasonably able to
35 use the remainder of the Premises for the purposes intended by this Lease, then this Lease
36 shall not terminate but, effective as of the date of such taking or condemnation, the Rent shall
37 be abated in an amount thereof proportionate to the area of the Premises so taken or
38 condemned. If, following such partial taking, the Tenant shall not be reasonably able to use the
39 remainder of the Premises for the purposes intended by this Lease, then this Lease shall
40 terminate as if the entire Premises had been taken or condemned. In the event of a taking or
41 condemnation as described in this Section 20, whether or not there is a termination of this
42 Lease, the Tenant shall have no claim against the City, other than an adjustment of Rent to the
43 date of taking or condemnation, and the Tenant shall not be entitled to any portion of any
44 amount that may be awarded as damages or paid as a result or in settlement of such
45 proceedings or threat. ~~[JOE GORMLEY'S PROPOSED LANGUAGE INCORPORATED]~~

46 47 **21. Signs.**

48

1 The Tenant shall not place or maintain any sign, billboard, marquee, awning, decoration,
2 placard, lettering, advertising matter or other thing of any kind, whether permanent or
3 temporary, on the exterior of the Premises or the Building, or on the glass or any window or
4 door of the Premises or the Building, without first obtaining the City's written consent and, as
5 applicable, approval by the Maryland Historic Trust and the City's Historic Preservation
6 Commission. The Tenant shall maintain any Tenant-posted approved sign, billboard, marquee,
7 awning, decoration, placard, lettering or advertising matter or other thing of any kind, and shall
8 repair and replace the same when necessary to keep it in good condition and repair at all times.
9

10 **22. Holding Over; Surrender of Premises.**

11
12 (a) If the Tenant holds possession of the Premises after the expiration or termination
13 of this Lease without the City's written consent, the Tenant shall become a tenant from month
14 to month upon all terms, other than Basic Rent, herein specified and shall continue to be such
15 tenant from month to month until such tenancy shall be terminated by either party giving the
16 other Notice thereof at least thirty (30) calendar days prior to terminating such tenancy. During
17 such month to month tenancy Tenant shall pay rent at the amount of the Basic Rent due during
18 the last month of the Lease Term or any applicable Renewal Term, except that if the hold-over
19 tenancy is over the objection of the City, Tenant shall pay Basic Rent at twice the amount of
20 Basic Rent due during the last month of the Lease Term or any applicable Renewal Term.
21 Nothing contained in this Lease shall be construed as a consent by the City to the occupancy or
22 possession of the Premises by the Tenant after the expiration or termination of this Lease. Upon
23 the expiration or termination of this Lease, the City shall be entitled to the benefit of all public
24 general or public local laws relating to the speedy recovery of the possession of lands and
25 tenements held over by tenants, that may now or hereafter be in force.

26 (b) On the last day or earlier termination of this Lease, the Tenant shall vacate the
27 Premises and leave it in good condition and repair, normal wear and tear excepted, and shall,
28 dismantle and remove all of its personal property from the Premises. Any personal property that
29 the Tenant does not remove within thirty (30) calendar days of vacating shall be deemed
30 abandoned and, at the option of the City, immediately shall become the property of the City. Any
31 other personal property that the City does not desire to retain shall be removed and disposed of
32 by the City at Tenant's cost and expense, which shall be invoiced by the City and paid by the
33 Tenant as Additional Rent.

34 (c) Within ten (10) calendar days of vacating, the City shall tour the Premises, with
35 the Tenant present if possible, to determine the condition of the Premises and the condition of
36 personal property in the Premises. Any items determined to be in need of correction or repair
37 may be corrected or repaired by the City, and shall be invoiced by the City and paid by the
38 Tenant as Additional Rent.
39

40 **23. Security; Liability of the City.**

41
42 (a) The Tenant acknowledges that the rents reserved in this Lease do not include
43 the cost of private security guards or other private security measures, and that the City has no
44 obligations to provide such private security services. The Tenant assumes all risks associated
45 with the security of the Premises. The Tenant shall police, light and maintain the Premises in a
46 clean, safe and secure manner.

47 (b) The Tenant shall not under any circumstances issue any no trespass notices,
48 whether oral or written, or exclude any individual from the Premises or the Property for any
49 reason, except to prevent a crime from being committed on the Premises or the Property, and
50 except in the case of an emergency or unsafe condition. If the Tenant desires to issue any no

1 trespass notices or exclude any individual from the Premises and/or the Property, except to
2 prevent a crime from being committed on the Premises or the Property, and except in the case
3 of an emergency or unsafe condition, the Tenant shall send a written request to the City, and
4 the City shall make the ultimate decision how and if to act on this request.

5 (c) The City, its elected officials, appointees, directors, employees, agents, and
6 representatives shall not be liable for any damage to property of the Tenant or of others located
7 on the Premises or entrusted to its or their employees nor for the loss of any property by theft or
8 otherwise, nor for any injury or damage to persons or property resulting from theft, casualty,
9 acts of God, fire of every nature and type, the accumulation of snow or ice, explosion, falling
10 plaster, steam, gas, electricity, wind, water, rain or snow which may overflow or leak or be
11 discharged from any part of the Premises, the Property, and/or the Building, or from the pipes,
12 appliances or plumbing works of the same or from the street or subsurface or from any other
13 place, or from dampness, or from any other cause whatsoever; nor shall the City be liable for
14 any such damage caused by other persons in the Premises, the Property, and/or the Building,
15 or for damage caused by operations in construction of any public or quasi-public works. All
16 property of the Tenant kept or stored on the Premises shall be so kept at the risk of the Tenant
17 only and the Tenant shall indemnify, defend and hold the City, its elected officials, appointees,
18 directors, employees, agents, and representatives harmless from any claims arising out of
19 damage to the same, including subrogation claims by the Tenant's insurance carrier.

20
21 **24. Quiet Enjoyment.**

22
23 If the Tenant timely pays all the Rent herein reserved and is not in default in the
24 performance and observation of all of the other terms, covenants and conditions of this Lease
25 on the Tenant's part to be performed and observed hereunder, the Tenant shall, during the
26 Term and any Renewal Term, peaceably and quietly have, hold and enjoy the Premises without
27 molestation or hindrance by the City or any party claiming through or under the City, subject to
28 the provisions of this Lease.

29
30 **25. Indemnification.**

31
32 (a) The Tenant shall indemnify, defend and hold the City, its elected officials,
33 appointees, directors, employees, agents, and representatives harmless from and against all
34 liability for injuries to persons, including death, and damage to the Premises, the Property, the
35 Building, or other real and personal property, arising from acts or omissions of the Tenant, its
36 officers, agents, employees, contractors, patrons, volunteers, guests or invitees.

37 (b) The Tenant's indemnifications include reasonable attorney fees and costs
38 incurred by the City in defending any claims, complaints, causes of action, lawsuits, or other
39 such actions. The City, in its sole discretion, may participate in handling its own defense or
40 exclusively handle its own defense, and select its own attorneys, including the City Attorney.

41 (c) The Tenant indemnification does not limit any immunity which the City, its elected
42 officials, appointees, directors, employees, agents, and representatives are entitled to assert,
43 and includes all costs and expenses, including attorney's fees, whether or not related to
44 administrative or judicial proceedings.

45 (d) The Tenant shall reimburse the City, within thirty (30) calendar days after
46 invoicing for such reimbursement as Additional Rent, for any damage to the Premises, the
47 Property and the Building caused by the negligence or willful misconduct of the Tenant, its
48 officers, agents, employees, contractors, patrons, volunteers, guests or invitees.

49 (e) The Tenant shall ensure that the policies of insurance carried by Tenant under
50 Section 8 of this Lease provide coverage for Tenant's indemnification obligations under this
51 Section.

1
2 **26. City Council Meeting or Work Session; Annual Financial Compilation.**
3

4 a. For the purpose of keeping the Mayor and City Council of Annapolis apprised of
5 any changes to the Premises or the Tenant's use of the Premises, after the end of the first (1st)
6 year of the Term and each year thereafter during the Term and any Renewal Term, the Tenant
7 shall, if requested by the City in writing fourteen (14) calendar days prior thereto, attend a City
8 Council meeting or work session to report on any such changes.
9

10 b. Within ninety (90) calendar days from the end of each Lease year, the Tenant
11 shall provide the City with an annual financial compilation prepared by a certified public
12 accountant along with any Performance Rent due pursuant to Section 6(d).
13

14 **27. Miscellaneous.**
15

16 (a) Non-Discrimination.

17 (i) The Tenant shall not discriminate against any person with regard to
18 membership policies, employment practices, or in the provision of or access to services based
19 on race, color, religion, national origin, ancestry, sex, age, disability or any other status or class
20 protected by law. This provision shall not be construed to prevent the Tenant from rendering
21 services pursuant to this Lease to categories of individuals with specific needs, provided that
22 such services are not rendered in an unlawfully discriminatory manner.

23 (ii) The Tenant shall accept Temporary Aide to Needy Families ("TANF"),
24 commonly referred to as Temporary Cash Assistance ("TCA"), and Supplemental Nutritional
25 Assistance Payments ("SNAP") benefits, commonly referred to as "food stamps", as forms of
26 payment. The Tenant may impose any reasonable restrictions imposed by the United States
27 Department of Agriculture and the Anne Arundel County Department of Social Services.

28 (b) Reservation of Governmental Authority. The City reserves the right at all times to
29 exercise full governmental control and regulation with respect to all matters arising under or
30 related to this Lease, provided that such control and regulation does not constitute an
31 unconstitutional impairment of this Lease.

32 (c) Modification. This Lease sets forth the entire agreement between the parties
33 relative to the subject matter of this Lease. No representation, promise or condition, whether
34 oral or written, not incorporated herein shall be binding upon either party to this Lease. This
35 Lease shall not be waived, amended or modified except in writing and signed by the authorized
36 representative(s) of both parties. No act by any representative or agent of the City, other than
37 such a written agreement and acceptance by the City, shall constitute an acceptance thereof.

38 (d) Access to Records. During normal business hours with reasonable prior notice
39 Notice from the City, and as often as the City may deem necessary, the Tenant shall make
40 available to and allow inspection and copying by the City, its employees or agents, of all books,
41 records, accounts, reports, information and documentation of the Tenant related to the subject
42 matter of this Lease. The Tenant shall maintain all books, records, accounts, reports,
43 information and documentation required under this Lease for a period of at least three (3) years
44 after the date of termination of this Lease including any renewals, except in the event of
45 litigation or settlement of claims arising from the performance of this Lease, in which case the
46 Tenant shall do so until three (3) years after final adjudication of such litigation or settlement of
47 claims. Tenant shall mark as "Confidential" any books, records, accounts, reports, information
48 and documentation that the City inspects and copies and that Tenant desires to maintain as
49 confidential. For purposes of the Maryland Public Information Act, to the extent practicable the
50 City shall treat as "Confidential" and not disclose any Tenant books, records, accounts, reports,
51 information and documentation that Tenant has marked as "Confidential."

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

8 (f) Independent Contractor Status. Nothing contained in this Lease shall be
9 construed to constitute the Tenant as an agent, representative or employee of the City, or to
10 create any relationship between the parties other than landlord and tenant.

11 (g) Binding Effect. The terms of this Lease shall be binding on and enforceable
12 against the parties and their respective successors and assigns.

13 (h) Governing Law. In all actions arising from this Lease, the laws of the State of
14 Maryland shall govern, and the venue for all actions initiated pursuant to this Lease shall be
15 exclusively the Courts of Anne Arundel County, Maryland. The parties waive jury trial in all
16 actions initiated pursuant to this Lease.

17 (i) Recitals. The recitals (WHEREAS clauses) of this Lease are incorporated into
18 and are a material part of this Lease.

19 (j) Severability. If any of the provisions of this Lease are declared by a court or
20 other lawful authority to be unenforceable or invalid for any reason, the remaining provisions
21 hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by
22 law.

23 (k) Survival. Those paragraphssections in this Lease which by their nature are
24 intended to survive shall survive the termination of this Lease.

25 (l) Authorization. This Lease is authorized by the City Council pursuant to O-_____
26 5-18.

27 (m) Availability of Funds. All financial obligations of the City, and the performance of
28 such obligations, are subject to appropriation and availability of funds.

29 (n) Terminology.

30 (i) Where this Lease provides for an act to be undertaken or performed by
31 the "City", the act shall be undertaken by the City Manager.

32 (ii) Where this Lease provides for an act to be undertaken or performed by
33 the City Council, the act shall be performed by a simple majority of the City Council.

34 (iii) Where this Lease provides for an act to be undertaken or performed in a
35 certain number of "business days", business days shall mean Monday through Friday.

36 (o) Counterparts. This Lease may be executed in any number of counterparts and
37 by the parties hereto in separate counterparts, each of which when so executed and delivered
38 shall be deemed to be an original and all of which taken together shall constitute but one and
39 the same instrument.

40 (p) Business Summary. Any reference to and/or discussion of activities, actions,
41 obligations and/or decisions in the Business Summary shall be consistent with the applicable
42 Lease requirements, including, but not limited to, obtaining the proper approval from the City or
43 City Council.

44 (p) Notice. Any notice required to be delivered (each a "Notice") shall be deemed to
45 have been received when the Notice has been sent by certified mail, return receipt, overnight
46 carrier, or hand delivered with signed receipt to the following address and individual or such
47 other address and/or such other individual as a party may identify in writing to the other party:

48
49 To the City: City Manager
50 160 Duke of Gloucester Street
51 Annapolis, Maryland 21401

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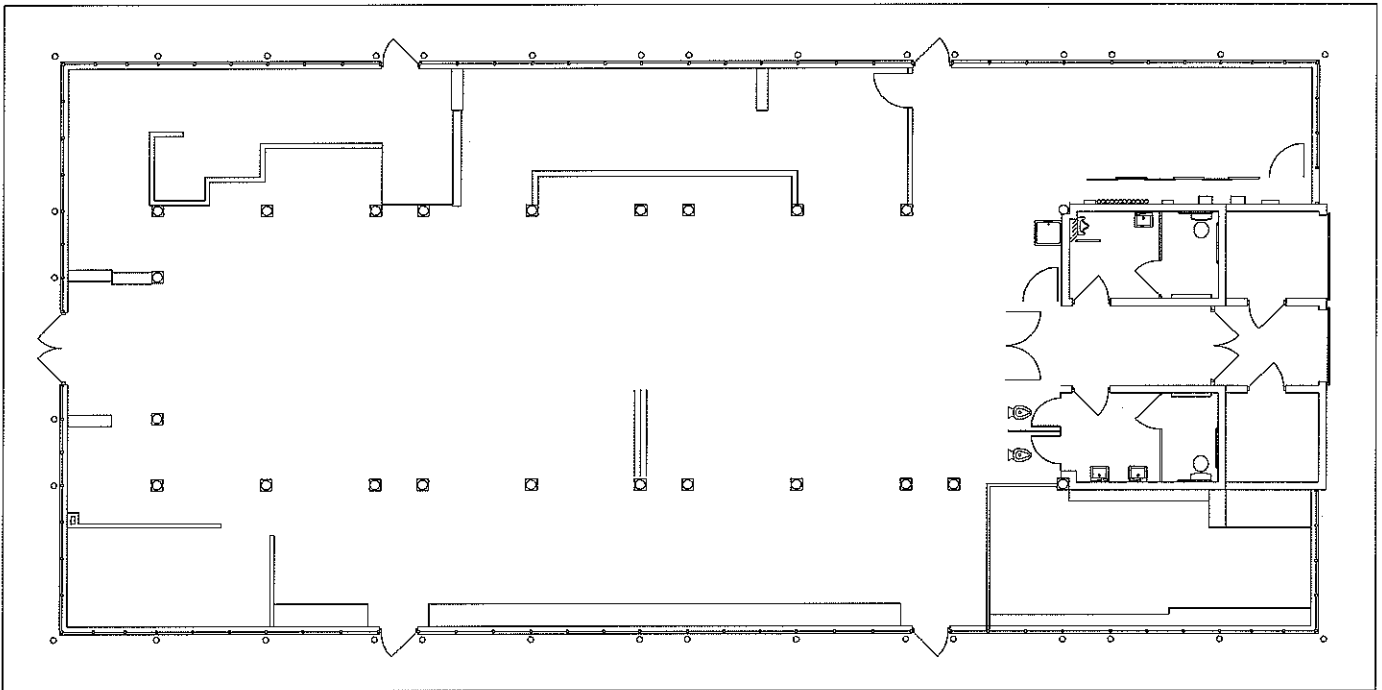
With a Copy to: City Attorney
 160 Duke of Gloucester Street
 Annapolis, Maryland 21401

To the Tenant: _____

**ATTACHMENT A-4
DEPICTION OF MARKET HOUSE AND PREMISES**

[See following page.]

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**ATTACHMENT B
BUSINESS SUMMARY**

**New Market House, LLC
Business Summary - February 9, 2018**

Our Mission:

- Be a catalyst for the revitalization of City Dock, and the greater Downtown area.
- Be a good neighbor to the residents of Annapolis.
- Be a good steward of this important historic landmark and restore it to its position as a vibrant center of commerce and meeting place for locals and visitors alike.
- We will engage the community and surrounding businesses in order to make the Market House, the City's Market House.
- We want the Market House to not only be the gateway to the City of Annapolis, but also to create a market that is relevant to and will attract people who live here, and that will ~~emphasize~~ proudly display the bounty of Annapolis, Anne Arundel County, and Maryland and the world.
- We look forward to a long, successful partnership with the City of Annapolis, the local community, and its many visitors.

The New Market House Concept:

We will operate a modern, public market house that will offer made to order food, fresh prepared items, beer, wine, and retail items that will be available for on-site consumption, and take out. Items will be offered from one or more vendors operating the various stall locations. Vendors will offer seasonally variable fresh produce and market goods in the market sections with an emphasis on local and regional products in accordance with consumer demand. Items sold will reflect the demands and needs of a combination of customers including Residents, Visitors, Boaters, etc.

The setting will include interior tables that will offer space for Market House customers to meet to consume items purchased at the counter(s), and share in the beauty of the Market House public space and the surrounding areas. We will help the City keep the surrounding sidewalks and Hopkins Plaza clean of debris, to enable Market House customers and city visitors to enjoy a pleasant outdoor experience.

Our targeted hours of operation are:

- Mon-Thu - 6am to 10pm
- Fri-Sat - 6am to 12am
- Sun - 7am-10pm Sun.

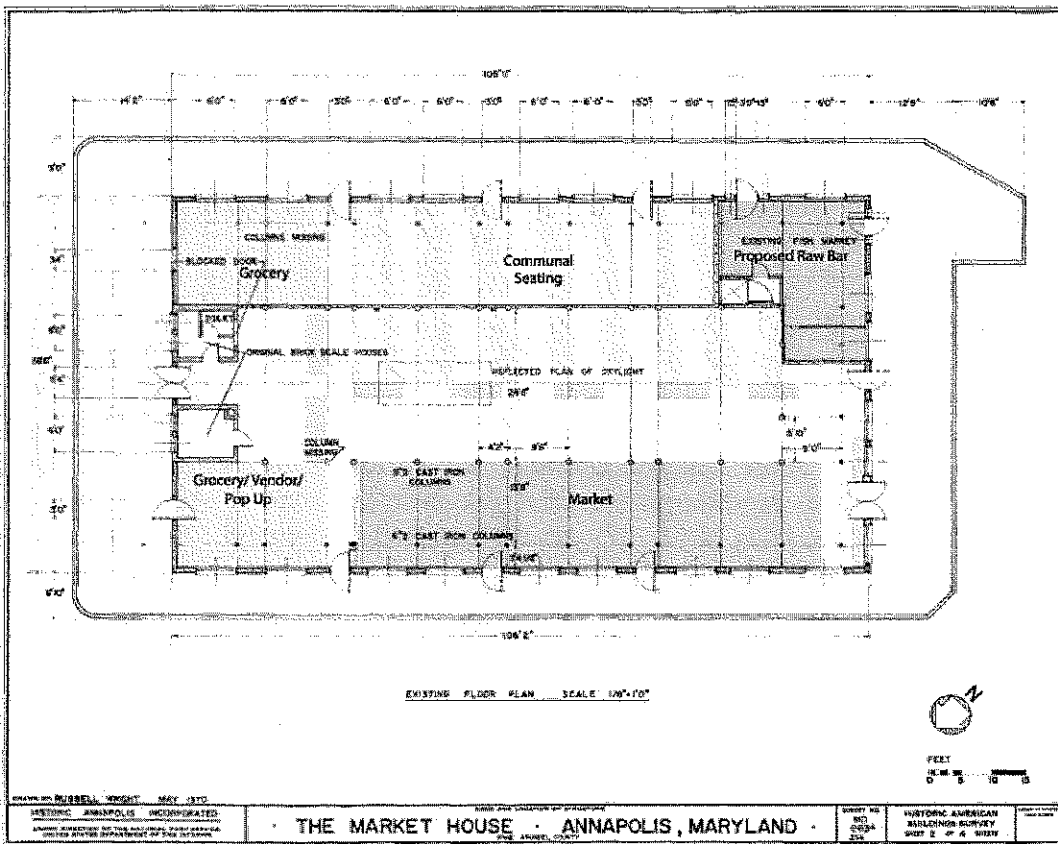
Our desire is to maintain this schedule throughout the year, but our operating hours may vary with the season and with consumer demand.

1 With proper City approval, and to the extent various groups provide support, we would also like
 2 to offer expanded "Market Days", in Market Space and surrounding areas, which would add
 3 many more items for sale, from many local establishments, farmers, craftspeople and artisans.
 4 We may also choose to offer seasonal and holiday specific events. The frequency and duration of
 5 these events is to be determined.

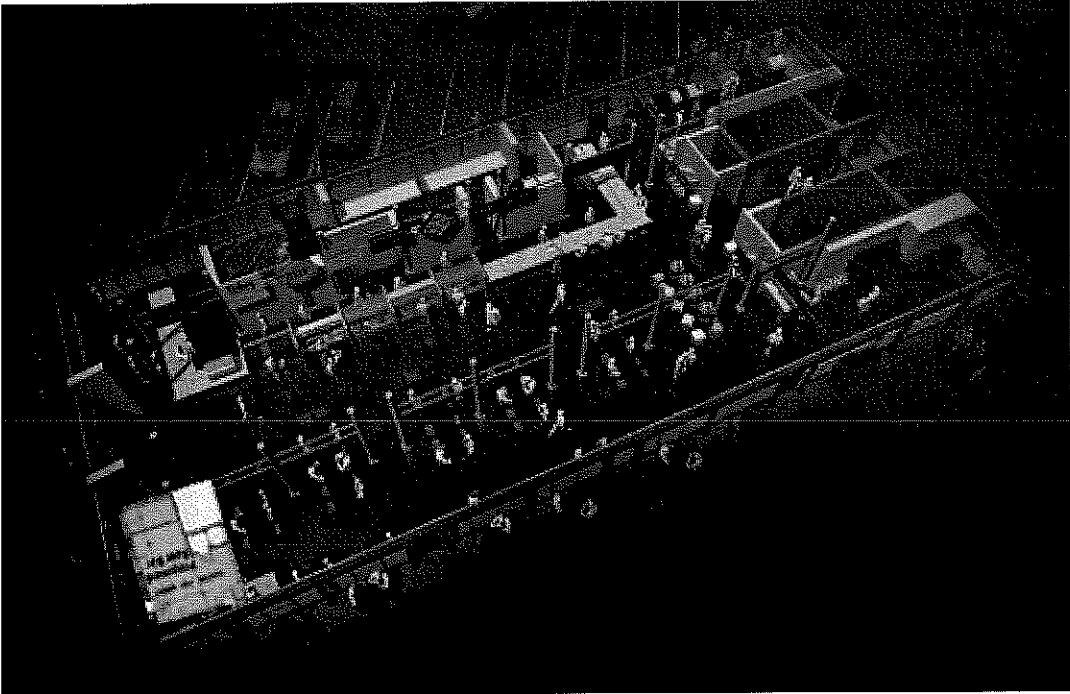
6
 7 We will seek to acquire a 12am beer and wine license, as allowed under 7.12.100.B1.

8
 9 If requested, we will provide high level reporting to the City quarterly, and complete CPA
 10 created reporting annually.

11 **The New Market House Concept:**



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These conceptual drawings are designed to indicate the general location of the various components of our plan. The final design will be based on consumer demands, seasonal issues, work flow, and final construction decisions, etc.

In the event of a discrepancy between details in this summary, and the lease, the lease prevails.

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**ATTACHMENT C
DEED OF PRESERVATION EASEMENT**

[See following page.]

**ATTACHMENT D
PERFORMANCE RENT**

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“Performance Rent” shall mean two percent (2%%) of cumulative annual gross revenues (exclusive of sales taxes) over ~~\$1,500,000.00~~ (One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00) received during each Lease year by Tenant and all approved subtenants.

BK 29139 PG 3251

NOT SUBJECT TO RECORDATION TAX PURSUANT TO MARYLAND ANNOTATED CODE TAX-PROPERTY ARTICLE, SECTION 12-108(a)

LR - Government Instrument 0.00
Agency Name: State of MD Office of Atty General
Instrument List: Agreement / Easement
Describe Other: preservation easement
Reference/Control #:
=====

DEED OF PRESERVATION EASEMENT

Total: 0.00
12/29/2015 03:33
CC02-S1
#5368785 CC0501 - Anne Arundel
County/CC05.01.10 - Register 10

THIS DEED OF PRESERVATION EASEMENT (this "Easement") is made as of this 17th day of December, 2015 by and between the CITY OF ANNAPOLIS, a municipality of the State of Maryland (the "Grantor"), and the MARYLAND HISTORICAL TRUST, a body corporate and instrumentality of the State of Maryland ("MHT").

RECITALS

WHEREAS, MHT was created for the purpose of preserving and maintaining historic, aesthetic and cultural properties, all as is more particularly provided for by law;

WHEREAS, the real property located at 25 Market Place, Annapolis, Maryland 21401, Anne Arundel County, and known as the Annapolis Market House (MIHP # AA-590) (the "Property") has substantial historic, aesthetic and cultural character and this Easement will promote the preservation and maintenance of the Property and its historic, cultural, scenic and aesthetic character;

WHEREAS, MHT is possessed with the power and duty to accept, hold and administer this Easement;

WHEREAS, MHT has determined that the Easement is exclusively for conservation purposes;

WHEREAS, in accordance with Chapter 396 of the Laws of Maryland 2011 (the "Act"), and the terms and conditions of a letter of approval dated August 22, 2012 from the Maryland Department of General Services on behalf of the Board of Public Works ("BPW") to Grantor, BPW has approved a \$250,000 grant to Grantor for the construction, renovation, and reconstruction, and capital equipping of the Property, including architectural and engineering fees (the "Project");

WHEREAS, the Act requires as a condition precedent to the making of the BPW Grant that Grantor shall submit evidence satisfactory to BPW of matching funds at least equal to the amount of the BPW Grant, which condition has been satisfied;

No Taxes Necessary

Osmond 12/29/15
Controller
Tax Division

CITY OF ANNAPOLIS
WATER DEPARTMENT
WATER BILLS PAID TO
DEC 17 2015

RA

12/29/15 03:09 PM C 0001 R 0003
Val #: 0003-159083 \$0.00
Easement - Recordation Tax - Exempt
Instrument Type: Easement
2015 DEC 29 P 3 41
RECEIVED FOR RECORDS
CIRCUIT COURT A.A. COUNTY

WHEREAS, the Act requires as a condition precedent to the making of the BPW Grant that Grantor, as owner of the Property, convey a perpetual preservation easement in form and substance acceptable to MHT.

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grantor hereby grants and conveys this Easement to MHT with Special Warranty of Title in all of the Property, together with all of the improvements thereon, and appurtenances, rights and interests thereunto belonging, and which is more particularly set forth in Exhibit A, attached hereto and incorporated herein.

2. Exhibit B, consists of 18 pages including as page 1 a schedule of photographs (the "Schedule"), and as page 2 a survey of the Property, and describes the various documents, photographs of selected portions of the Property, and other materials that are on file with MHT and are not recorded herewith, but are nonetheless as fully and completely incorporated by reference into this Easement as though recorded herewith (the "Baseline Documentation"). Grantor acknowledges and consents that Exhibit B may be modified and updated by MHT upon the conclusion of the Project. Grantor acknowledges that it has received copies of Exhibit B, including all of those items listed on the Schedule.

3. The terms of the Easement are as follows:

(A) Duration and Nature of the Easement. The Easement shall be perpetual in duration. The parties agree that it is and shall be considered an easement in gross and as such is inheritable and assignable and runs with the land as an incorporeal property interest in the Property, enforceable by MHT and its successors, transferees and assigns with respect to the Property and against Grantor and Grantor's heirs, successors, transferees and assigns, all of whom are collectively referred to herein as "MHT" and "Grantor", respectively. The Easement is subject to any presently existing valid encumbrances, easements and rights-of-way upon the Property.

(B) Public Access. Grantor shall make the Property open to the public on a minimum of five (5) days per year from 10:00 a.m. to 5:00 p.m., or the equivalent of thirty-five (35) hours a year, and at other times by appointment as may be determined by Grantor.

(C) Maintenance and Administration. Grantor shall keep and maintain the Property, including the Exterior and Interior (as hereinafter defined) of the improvements thereon, in good, clean and safe condition. Grantor shall maintain, repair and administer the Property and the Exterior and Interior of the improvements thereon in a manner to preserve the historic, aesthetic and cultural character and appearance of the Property and the improvements thereon as described in Exhibit B. The maintenance, repair and administration of the Property and the Exterior and Interior of the improvements thereon shall further conform to the requirements of Paragraph D below. This covenant does not require reconstruction of any improvements which are destroyed in whole or in part by casualty loss unless insurance proceeds are available for such purposes.

ANNE ARUNDEL COUNTY COURTS (LAND RECORDS) RTD 25105, p. 0020, msh_0009_2001. Date available v110/210. Printed 09/23/11.

BK 29139 PG 327

(D) Changes and Alterations.

(i) Without the express written consent of the Director of the Maryland Historical Trust (the "**Director**"), Grantor shall not cause, permit or suffer any construction which would alter or change the Property or the Exterior of the improvements thereon or portions of the Interior as provided in Paragraph 3 (D) (ii) (b) below and described in Exhibit B, provided, however, that if damage has resulted to said Exterior or portions of the Interior from casualty loss, deterioration or wear and tear, then the maintenance, repair, repainting or refinishing to correct the damage shall be permitted without such written permission of the Director, provided that such maintenance, repair, repainting or refinishing is performed in a manner that will not alter the appearance of such improvements upon conclusion of the restoration of the Property.

(ii) (a) The terms "**Exterior**" and "**Interior**" mean the exterior of the improvements thereon and those certain interior features on the Property including architectural style, the general design and arrangement, the color, the kind and texture of the building materials and the type and style of all windows, doors, light fixtures, signs and other similar exterior and interior features. The term "**Construction**" shall include all construction, reconstruction, improvement, enlargement, painting and decorating, alteration, demolition, maintenance or repair of any structure or works.

(b) The only portions of the Interior of the existing improvements to be covered by the Easement shall be as follow:

- (1) interior case iron columns;
- (2) surviving original framing elements;
- (3) open massing of the interior.

(iii) Without the express written consent of the Director, no building, structure, or improvement may be constructed or erected on the Property other than those buildings, structures, or improvements which are as of the date of this Easement located on the Property, as described and depicted in Exhibit B.

(E) Archeological Resources. Without the express written consent of the Director, Grantor shall not cause, permit or suffer any grading, excavation, plowing over twelve (12) inches in depth, subsoiling, drainage improvement, or other undertaking which would materially disturb the surface or subsurface of the ground.

(F) Inspection. MHT shall have the right to enter the Property on reasonable notice to Grantor for the purpose of inspecting the Property to determine whether there is compliance by Grantor with the terms of this Easement.

(G) Breach by Grantor. Upon any breach of the terms of this Easement by Grantor, MHT may, after reasonable notice to Grantor, exercise any or all of the following remedies:

(i) institute suit(s) to enjoin any breach or enforce any covenant by ex parte, temporary, and/or permanent injunction;

(ii) demand that the Property be restored promptly to the condition required by this Easement; and

(iii) enter upon the Property, correct any breach, and hold Grantor responsible for the resulting cost.

The parties' remedies shall be cumulative and shall be in addition to any other rights and remedies available to them at law or equity. Each party shall be responsible for its own costs of litigation and attorney fees.

(H) Waiver. No waiver of any term or condition of this Easement shall have any force or effect unless it is in writing and approved by the parties hereto. No failure on the part of MHT to enforce any covenant or provision herein nor the waiver of any right thereunder by MHT shall discharge or invalidate such covenant or provision or any other covenant, condition, or provision hereof, or affect the right of MHT to enforce the same in the event of a subsequent breach or default.

(I) Consent, Disapproval and Appeal. If the terms of this Easement require the consent of the Director, such consent shall be requested by notice to the Director and shall be deemed to have been given within forty-five (45) days after receipt of notice by the Director unless the Director gives notice to the Grantor of specific reason for disapproval. If the Director gives a notice of disapproval, Grantor may appeal the disapproval to the Board of Trustees of the Maryland Historical Trust for review by it or by any person or agency that it designates to make the review. Appeal shall be made by notice to the Director given within forty-five (45) days of receipt of notice of disapproval from the Director.

(J) Notice. Any notice required to be given by this Easement shall be in writing and may be given by certified or registered mail, with postage prepaid and return receipt requested, if to Grantor, addressed to Grantor as follows:

City Attorney
City of Annapolis
160 Duke of Gloucester Street
Annapolis, Maryland 21401

or to Grantor at such other address as Grantor may from time to time designate by notice to MHT.

ANNE ARUNDEL COUNTY CIRCUIT COURT (Land Records) RFD 29139, p. 0328, MSA_CE59_29581. Date available 01/15/2016. Printed 05/02/2017.

BK 29139 PG 3291

Any notice required to be given by this Easement shall be in writing and may be given by certified or registered mail, with postage prepaid and return receipt requested, if to MHT or the Director, addressed to MHT or the Director as follows:

Director
Maryland Historical Trust
100 Community Place
Crownsville, Maryland 21032-2023

or to MHT or the Director at such other address as MHT may from time to time designate by notice to Grantor.

Any notice given in the foregoing manner shall be deemed to have been given upon receipt thereof, which shall be presumed to be two (2) days after the day notice has been deposited with the United States Post Office.

(K) Construction. The Easement is for the purpose of promoting and shall be construed to promote the purposes of the statutes creating and governing MHT and of Section 2-118 of the Real Property Article of the Annotated Code of Maryland and to preserve the historic, cultural, scenic and aesthetic character of the Property.

(L) Subsequent Conveyance. Grantor agrees that the restrictions of the Easement shall be inserted, verbatim or by express reference, in any subsequent deed or other legal instrument by which Grantor's fee simple title to the Property or any other possessory interest in the Property, or any part thereof, is divested or conveyed.

(M) Transfer of Ownership. Grantor agrees for itself, its personal representatives, heirs, successors, transferees and assigns, to notify MHT in writing of the names and addresses of any party to whom the Property, or any part thereof, is being transferred before or within forty-five (45) days of the time the transfer is consummated.

(N) Conservation Purposes. MHT agrees that it will hold this Easement exclusively for conservation purposes *i.e.*, that it will not transfer this Easement whether or not for consideration. However, subject to the provisions of any applicable federal law, MHT may assign or transfer its interest in this Easement to a governmental unit or organization which qualifies at the time of the transfer as an eligible donee of this Easement under any pertinent provisions of federal law.

(O) Governing Law. This Easement is made in, and shall be governed by, the laws of the State of Maryland.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

WITNESS/ATTEST:

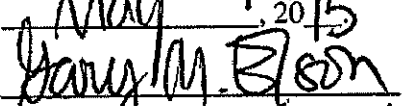
GRANTOR:

CITY OF ANNAPOLIS



Regina Watkins-Eldridge, City Clerk

By:  (SEAL)
Michael Pantelides, Mayor

Approved as to form and legal
sufficiency this 29 day of

May, 2015

Gary M. Eason
City Attorney (Assistant)

City Manager Review:

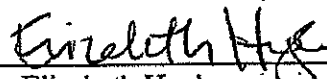

Thomas C. Andrews, City Manager

WITNESS:

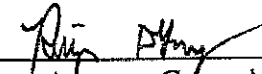
MHT:

MARYLAND HISTORICAL TRUST


Anne Eastman

By:  (SEAL)
Elizabeth Hughes, Director

Approved as to form and legal
sufficiency this 15 day of

December, 2015.

Assistant Attorney General

STATE OF MARYLAND, Anne Arundel CITY/COUNTY, to wit:

I HEREBY CERTIFY, that on this 3rd day of June, in the year 2015, before the subscriber, personally appeared Michael Pantelides, who acknowledged that he executed the foregoing instrument for the purposes therein contained as the duly authorized Mayor of the City of Annapolis.

Russell
Notary Public

My Commission Expires: 11/19/15

STATE OF MARYLAND, Anne Arundel COUNTY, to wit:

I HEREBY CERTIFY, that on this 17th day of December, in the year 2015 before the subscriber, personally appeared Elizabeth Hughes, and acknowledged that she executed the foregoing instrument for the purposes therein contained as the fully authorized Director of the Maryland Historical Trust.

Catherine R Eastman
Notary Public

My Commission Expires: 5/2/2016

CERTIFICATION

I hereby certify that this instrument was prepared by me or under my supervision and that I am an attorney admitted to practice before the Court of Appeals of Maryland.



Rieyn DeLony (SEAL)
Rieyn DeLony

Attachments:

- Exhibit A Legal Description
- Exhibit B Baseline Documentation

ANNE ARUNDEL COUNTY Circuit Court Records APD 29139, p. 0301, MSA_C009_29001. Date available 01/10/2016. Printed 06/02/2017.

EXHIBIT A

LEGAL DESCRIPTION

**ANNAPOLIS MARKET HOUSE
25 MARKET PLACE
ANNAPOLIS, MARYLAND
(MIHP # AA-590)**

BEGINNING FOR THE SAME AT A POINT, said point be located South 28 degrees, 27 minutes 23 seconds East, 68.86 feet of the southeastern corner of the building currently housing the Federal House Restaurant (recorded among the Land Records of Anne Arundel County at Book 3894 at Page 49) located at 24 Market Space and approximately 1 foot from the southwestern corner of the roof overhang of the Market House, thence leaving said point and running approximately one foot beyond the roof overhang of the Market House the following four (4) course and distances:

- 1) South 51 degrees, 28 minutes, 28 seconds East, 63.00 feet;
- 2) North 38 degrees, 31 minutes, 32 seconds East, 122.00 feet;
- 3) North 51 degrees, 28 minutes, 28 seconds West, 63.00 feet;
- 4) South 38 degrees, 31 minutes, 32 seconds West, 122.00 feet;

to the **POINT OF BEGINNING**.

All bearing and distances are based on NAD 83 and were prepared without benefit of survey and encompass the roof overhang.

Containing in all 7686.00 square feet.

Being part of the conveyance dated July 28, 1784 from Nicolas Carroll, Jacob Hurst, Charles Wallace, Joseph Williams, Thomas Harwood, John Davidson, James MacCubin, and James Williams to Mayor, Recorder, Alderman and Common Council of the City of Annapolis recorded among the Land Records of Anne Arundel County Maryland in Liber NH 2 at Folio 64.

ANNE ARUNDEL COUNTY COURTS (Land Records) RD 29139, p. 0332, MSA_C009_25001. Date available 01/16/2016. Printed 05/02/2017.

EXHIBIT B

BASELINE DOCUMENTATION

**ANNAPOLIS MARKET HOUSE
25 MARKET PLACE
ANNAPOLIS, MARYLAND
(MIHP # AA-590)**

- PAGE 1 OF 18 SCHEDULE
- PAGE 2 OF 18 PLAT OF MARKET HOUSE SHOWING PRESERVATION EASEMENT, CITY OF ANNAPOLIS, EXHIBIT B.3 DATED 5/14/2013
- PAGE 3 OF 18 SOUTHWEST AND SOUTHEAST PERSPECTIVE
- PAGE 4 OF 18 NORTHWEST AND SOUTHWEST PERSPECTIVE
- PAGE 5 OF 18 SOUTHWEST ELEVATION ENTRANCE DETAIL
- PAGE 6 OF 18 SOUTHWEST ELEVATION
- PAGE 7 OF 18 DETAIL OF OVERHANG FACING SOUTHEAST
- PAGE 8 OF 18 NORTHWEST ELEVATION
- PAGE 9 OF 18 NORTHWEST ELEVATION OVERHANG DETAIL
- PAGE 10 OF 18 SOUTHEAST AND NORTHEAST PERSPECTIVE
- PAGE 11 OF 18 NORTHEAST ELEVATION
- PAGE 12 OF 18 INTERIOR FACING NORTHEAST
- PAGE 13 OF 18 CASE IRON COLUMNS FACING SOUTHEAST
- PAGE 14 OF 18 INTERIOR FACING NORTHEAST
- PAGE 15 OF 18 INTERIOR FACING SOUTHWEST
- PAGE 16 OF 18 INTERIOR FACING SOUTHEAST
- PAGE 17 OF 18 SOUTHEAST SIDE OF INTERIOR FACING SOUTHWEST
- PAGE 18 OF 18 NORTHWEST SIDE OF INTERIOR FACING SOUTHWEST

ANNAPOLIS MARKET HOUSE
25 MARKET PLACE
ANNAPOLIS, MARYLAND
(MIHP # AA-590)
EASEMENT EXHIBIT B PAGE 1 OF 18

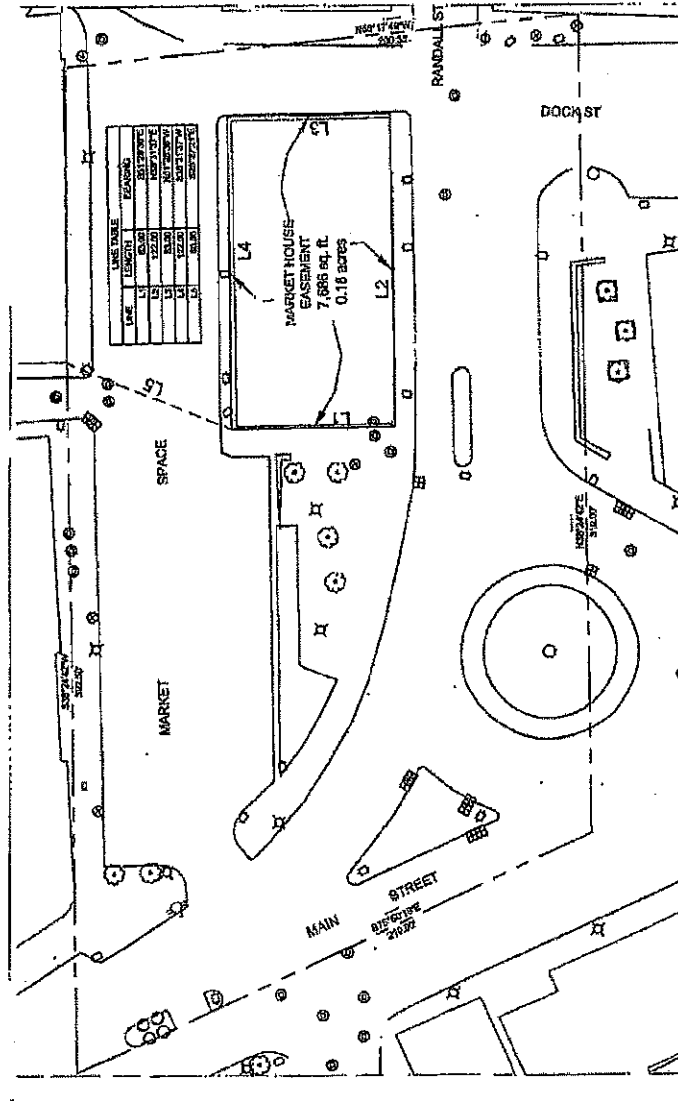
SCHEDULE

PREPARED: CRE 09/2013
MARYLAND HISTORICAL TRUST

SIGNED ORIGINAL ON FILE WITH THE M.H.T.
GRANTOR

MHT

ANNE ARUNDEL COUNTY CIRCUIT COURT (Lano Records) RFD 29138, p. 0334, MSA_CES9_28061. Date available 01/15/2016. Printed 05/02/2017.



LINE	LENGTH	FEASING
1	12.70	100.00%
2	12.70	100.00%
3	12.70	100.00%
4	12.70	100.00%
5	12.70	100.00%
6	12.70	100.00%
7	12.70	100.00%
8	12.70	100.00%
9	12.70	100.00%
10	12.70	100.00%

City of Annapolis DEPARTMENT OF PUBLIC WORKS	
EXHIBIT B.3 PLAT OF MARKET HOUSE SHOWING PRESERVATION EASEMENT	
REVISIONS NO. DESCRIPTION --- ----- --- ----- --- ----- --- ----- --- ----- --- -----	PREPARED BY: MARYLAND HISTORICAL TRUST DATE: 05/14/2013 DRAWN BY: MARYLAND HISTORICAL TRUST DATE: 05/14/2013 CHECKED BY: MARYLAND HISTORICAL TRUST DATE: 05/14/2013 APPROVED BY: MARYLAND HISTORICAL TRUST DATE: 05/14/2013

ANNAPOLIS MARKET HOUSE
 25 MARKET PLACE
 ANNAPOLIS, MARYLAND
 (MIHP # AA-590)
 EASEMENT EXHIBIT B PAGE 2 OF 18

PLAT OF MARKET HOUSE SHOWING PRESERVATION
 EASEMENT, CITY OF ANNAPOLIS, EXHIBIT B.3 DATED
 5/14/2013
 PREPARED: CRE 09/2013
 MARYLAND HISTORICAL TRUST

SIGNED ORIGINAL ON FILE WITH THE M.H.T.
 GRANTOR

MHT

BK 29139 PG 3351

State of Maryland Land Instrument Intake Sheet										
<input type="checkbox"/> Baltimore City <input checked="" type="checkbox"/> County: <u>Anne Arundel</u> Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office Only. (Type or Print in Black Ink Only—All Copies Must Be Legible)										
1	Type(s) of Instruments	<input type="checkbox"/> Check Box if addendum Intake Form is Attached.								Space Reserved for Circuit Court Clerk Recording Validation
		<input type="checkbox"/> Deed <input type="checkbox"/> Deed of Trust	<input type="checkbox"/> Mortgage <input type="checkbox"/> Lease	<input checked="" type="checkbox"/> Other <input type="checkbox"/> Deed of Easement	<input type="checkbox"/> Other					
2	Conveyance Type Check Box	<input type="checkbox"/> Improved Sale Arms-Length [1]	<input type="checkbox"/> Unimproved Sale Arms-Length [2]	<input type="checkbox"/> Multiple Accounts Arms-Length [3]	<input type="checkbox"/> Not an Arms-Length Sale [9]					
3	Tax Exemptions (If applicable) Cite or Explain Authority	Recordation	Maryland State Agency							
		State Transfer	Exempt from Recordation and Transfer Fees							
		County Transfer	MD Ann. Code Tax Property Art. Section 12-108 (a)							
4	Consideration and Tax Calculations	Consideration Amount				Finance Office Use Only Transfer and Recordation Tax Consideration				
		Purchase Price/Consideration	\$			Transfer Tax Consideration	\$			
		Any New Mortgage	\$			X () % =	\$			
		Balance of Existing Mortgage	\$			Less Exemption Amount	-	\$		
		Other:	\$			Total Transfer Tax	=	\$		
		Other:	\$			Recordation Tax Consideration	\$			
		Full Cash Value:	\$			X () per \$500 =	\$			
		TOTAL DUE				\$				
5	Fees	Amount of Fees		Doc. 1		Doc. 2		Agent:		
		Recording Charge	\$			\$			Tax Bill:	
		Surcharge	\$			\$			C.B. Credit:	
		State Recordation Tax	\$			\$			Ag. Tax/Other:	
		State Transfer Tax	\$			\$				
		County Transfer Tax	\$			\$				
		Other	\$			\$				
		Other	\$			\$				
6	Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).	District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG			
		06	90005004						<input type="checkbox"/> (5)	
		Subdivision Name		Lot (3a)	Block (3b)	Sect/AR (3c)	Plat Ref.	Sq Ft/Acreage (4)		
		Location/Address of Property Being Conveyed (2)								
		25 Market Street, Annapolis, Maryland 21401								
		Other Property Identifiers (if applicable)						Water Meter Account No.		
		Residential <input type="checkbox"/> or Non-Residential <input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> or Ground Rent <input type="checkbox"/> Amount:								
		Partial Conveyance? <input type="checkbox"/> Yes <input type="checkbox"/> No Description/Amt. of SqFt/Acreage Transferred:								
		(If Partial Conveyance, List Improvements Conveyed:								
		7	Transferred From	Doc. 1 - Grantor(s) Name(s)				Doc. 2 - Grantor(s) Name(s)		
City of Annapolis										
Doc. 1 - Owner(s) of Record, if Different from Grantor(s)				Doc. 2 - Owner(s) of Record, if Different from Grantor(s)						
8	Transferred To	Doc. 1 - Grantee(s) Name(s)				Doc. 2 - Grantee(s) Name(s)				
		Maryland Historical Trust								
		New Owner's (Grantee) Mailing Address								
100 Community Place, Crownsville, MD 21032										
9	Other Names to Be Indexed	Doc. 1 - Additional Names to be Indexed (Optional)				Doc. 2 - Additional Names to be Indexed (Optional)				
10	Contact/Mail Information	Instrument Submitted By or Contact Person								<input checked="" type="checkbox"/> Return to Contact Person
		Name: Anne Eastman								<input type="checkbox"/> Hold for Pickup
		Firm: Maryland Historical Trust								<input type="checkbox"/> Return Address Provided
		Address: 100 Community Place								
		Crownsville, MD 21032 Phone: (410) 514-7308								

Land Records RFD 24159, p. 0530, WSA_CES_25001, Date available 01/15/2016, Printed 05/02/2017.

