



City of Annapolis

Signature Copy

Ordinance: O-30-21

160 Duke Of Gloucester
Street
Annapolis, MD 21401

File Number: O-30-21

Market Space Lease Agreements - For the purpose of approving the leases for certain City-owned property located at Market Space, Annapolis, Maryland 21401, between Bembe Beach, LLC, d/b/a Federal House and the City of Annapolis, Iron Rooster-Annapolis, LLC and the City of Annapolis, New Market House, LLC and the City of Annapolis, McGarvey's Annapolis, LLC and the City of Annapolis, and Middleton's Tavern, Ltd. and the City of Annapolis; providing an effective date; and matters generally relating to said Lease Agreements.

**CITY COUNCIL OF THE
City of Annapolis**

Ordinance 30-21

Introduced by: Mayor Buckley

Co-Sponsored by: Alderwoman Tierney, Alderman Schandelmeier

**Referred to
Economic Matters Committee**

AN ORDINANCE concerning

Market Space Lease Agreements

FOR the purpose of approving the leases for certain City-owned property located at Market Space, Annapolis, Maryland 21401, between Bembe Beach, LLC, d/b/a Federal House and the City of Annapolis, Iron Rooster-Annapolis, LLC and the City of Annapolis, New Market House, LLC and the City of Annapolis, McGarvey's Annapolis, LLC and the City of Annapolis, and Middleton's Tavern, Ltd. and the City of Annapolis; providing an effective date; and matters generally relating to said Lease Agreements.

WHEREAS, the City is the fee simple owner of a parcel of land consisting of 19 marked parking spaces and related roadways, located at Market Space, Annapolis, Maryland 21401; and

WHEREAS, Bembe Beach, LLC, d/b/a Federal House, Iron Rooster-Annapolis, LLC, New Market House, LLC, McGarvey's Annapolis, LLC and Middleton's Tavern, Ltd. operate businesses located adjacent to the Property; and

WHEREAS, Bembe Beach, LLC, d/b/a Federal House, Iron Rooster-Annapolis, LLC, New Market House, LLC, McGarvey's Annapolis, LLC and Middleton's Tavern, Ltd. wish to lease certain portions of the Property, including 120 square feet of exclusive walkway area, together with a right to use, in common with others, certain adjoining sidewalks abutting the Property, but excluding parking meters, bollards and chains, and parking and traffic control signage; and

WHEREAS, Bembe Beach, LLC, d/b/a Federal House, Iron Rooster-Annapolis, LLC, New Market House, LLC, McGarvey's Annapolis, LLC and Middleton's Tavern, Ltd. each wish to individually lease certain portions of the Property for the purpose of extending their indoor restaurant seating as outdoor dining, and related special event, festival, and market activities, in connection with their businesses as further described in their separate Lease Agreements; and

WHEREAS, the City is willing to individually lease the property to Bembe Beach, LLC, d/b/a Federal House, Iron Rooster-Annapolis, LLC, New Market House, LLC, McGarvey's Annapolis, LLC and Middleton's Tavern, Ltd. for the purposes described and in accordance with the terms and conditions set forth in the Lease Agreements attached hereto and incorporated herein; and

WHEREAS, Article III, Section 8 of the Charter of the City of Annapolis requires the passage of an ordinance to authorize the leases.

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the Lease Agreements, copies of which are attached hereto and made a part hereof, between Bembe Beach, LLC, d/b/a Federal House and the City of Annapolis; Iron Rooster-Annapolis, LLC and the City of Annapolis; New Market House, LLC and the City of Annapolis; McGarvey's Annapolis, LLC and the City of Annapolis; and Middleton's Tavern, Ltd. and the City of Annapolis for the lease of certain municipal property, are hereby approved and authorized.

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

SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that this Ordinance shall take effect on November 1, 2021.

EXPLANATION

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

Underlining indicates matter added to existing law.

ADOPTED this 25th day of October, 2021.

Aye: 9 Mayor Buckley, Alderwoman Tierney, Alderman Paone,
Alderwoman Pindell Charles, Alderwoman Finlayson, Alderman
Gay, Alderman Schandelmeier, Alderman Savidge and Alderman
Arnett

THE ANNAPOLIS
CITY COUNCIL



Gavin Buckley

Date 11/16/21

ATTEST



Regina C. Watkins-Eldridge, MMC

Date 11/16/21



Chartered 1708

City of Annapolis
160 Duke of Gloucester Street
Annapolis, MD 21401

**LEASE AGREEMENT
BETWEEN THE CITY OF ANNAPOLIS AND
BEMBE BEACH, LLC (D/B/A FEDERAL HOUSE)
FOR MARKET SPACE**

THIS LEASE AGREEMENT (“Lease”) is made this _____ day of _____ 2021, by and between the City of Annapolis, a municipal corporation of the State of Maryland (the “City”), and BEMBE BEACH, LLC, a Maryland limited liability company d/b/a FEDERAL HOUSE (the “Tenant”).

WHEREAS, the City is the fee simple owner of a parcel of land consisting of nineteen (19) marked parking spaces and related roadways, located at Market Space, Annapolis, Maryland 21401 (collectively, the “Property”), and as more particularly described in a deed dated July 28, 1784, and attached hereto and incorporated herein as Attachment A; and

WHEREAS, the Tenant operates a business located adjacent to the Property; and

WHEREAS, the Tenant wishes to lease a portion of the Property, including one hundred twenty (120) square feet of exclusive walkway area, together with a right to use, in common with others, adjoining sidewalks abutting the Property, all as further depicted in Attachment B (the “Premises”) attached hereto and incorporated herein, but excluding parking meters, bollards and chains, and parking and traffic control signage; and

WHEREAS, the Tenant wishes to lease the Premises for the purpose of extending its indoor restaurant seating as outdoor dining, and related special event, festival, and market activities, in connection with its business as further described herein; and

WHEREAS, McGarvey’s Annapolis, LLC, Iron Rooster-Annapolis, LLC, New Market House LLC, and Middleton’s Tavern, Ltd. (collectively, the “Other Tenants”) wish to lease the remaining portions of the Property for similar purposes, as depicted in Attachment B, and in accordance with separate lease agreements with the City; and

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

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

1. Term; Tenant Termination with Start of the City Dock Project.

a. The City leases to the Tenant and the Tenant hereby leases from the City Premises for a Term commencing on ~~the Effective Date, as defined herein~~ November 1, 2021, and terminating on June 30, 2022 (the "Original Term"), unless terminated earlier in accordance with the terms of this Lease. ~~For purposes of this Lease, the "Effective Date" shall be that date falling thirty (30) calendars after the expiration or termination of the State of Maryland State of Emergency related to the COVID-19 Pandemic.~~

b. Provided that the Tenant is not otherwise in default hereunder and continues to occupy the Premises, and subject to the City's termination rights herein, the Tenant shall have the option to renew this Lease for successive terms of one (1) year upon the same terms and conditions herein except as may otherwise be provided for in a written amendment to this Lease (each a "Renewal Term" and collectively the "Renewal Terms"); provided that regardless of any Term or Renewal Term currently in effect, the Lease shall expire on the Start of the City Dock Project, as defined herein. Each Renewal Term shall commence and run with the City fiscal year (July 1st – June 30th). If the Tenant elects to exercise its option, it shall give the City at least sixty (60) calendar days written notice before the expiration of the Term, or any Renewal Term thereof.

c. For purposes of this Lease, "Start of the City Dock Project" shall be that date on which construction of the revitalization work at Market Space begins. The City shall provide the Tenant prior notice of the estimated Start of the City Dock Project date at least sixty (60) calendar days prior to the estimated date and the exact Start of the City Dock Project date as soon as reasonably established by the City. Within thirty (30) calendar days of such notice, the Tenant may terminate this Lease for convenience by providing written notice to the City that specifies a termination date prior to the Start of the City Dock Project date. Any such termination of this Lease by the Tenant shall not discharge the Tenant from any obligation it may have to the City by reason of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events or basis of which shall occur or arise) prior to such termination, whether the same be known or unknown at the time of such termination. The City shall prorate the Rent, and any Additional Rent, as of the date of termination for convenience.

2. Use of Premises.

a. The Tenant may use and occupy the Premises during the Term and any Renewal Term of this Lease only for the purpose of outdoor dining, and related special event, festival, market, and similar activities, in connection with its business (the "Purpose"), as further described in Attachment C attached hereto and incorporated herein, and for no other purpose whatsoever. The space on the Property leased to the Other Tenants is expressly and specifically excluded from this Lease, and the Other Tenants shall not be considered parties to or third party beneficiaries of this Lease.

b. The Tenant accepts the Premises in "as is" condition. The City makes no representation or warranty with respect to the condition or state of the land, the Property, or the Premises, or its fitness for any particular use, and the City shall not be liable for any latent or patent defect thereon. Unless as otherwise expressly provided in this Lease, the City does not make, and specifically disclaims, any representations, warranties or covenants of any kind or character, express or implied, with respect to the nature, condition, economical, functional, environmental or physical condition of the Premises. The Tenant represents and warrants to the City that: (1) the Tenant is knowledgeable in matters of real estate or had an opportunity to consult

with a real estate professional; (2) the Tenant is relying solely on the Tenant's own expertise and/or the expertise of the Tenant's consultants with respect to the Premises; (3) the Tenant shall assume all risk that adverse matters, including, but not limited to, adverse physical and environmental conditions, may not have been revealed through the Tenant's, or the Tenant's consultants', inspections, tests, studies, and investigations of the Premises.

c. The Tenant shall not use or occupy or permit the Premises, or any part thereof including, but not limited to, the Property, to be used or occupied, nor do or permit anything to be done in or on the Premises in a manner which would in any way (1) violate any of the terms of this Lease; (2) make it difficult for either the City or the Tenant to obtain fire or other insurance required by this Lease at standard rates; (3) cause or create a public or private nuisance in or on the Premises or the Property; (4) tend to impair or interfere with the character, reputation or appearance of the Premises or the Property; or (5) impede or interfere with the provision of any governmental services to the Property and neighboring residents and businesses, including but not limited, to fire and emergency services, utilities, police and public works.

d. The Tenant shall comply with all requirements of the City Fire Marshal's Office in its use of the Premises and the Property. The Tenant shall insure that no personal property, structures, or other materials remain in the fire lane (the "Fire Lane"), as depicted on Attachment B, at any time when the Tenant's business operations are closed or otherwise have no available staff to remove personal property from the Fire Lane.

e. The Tenant shall comply with all requirements of the Americans with Disabilities Act (ADA) in its use of the Premises, the Property, and any abutting public walkways including, but limited to any sidewalks, and any private property entrances and exits.

f. Music or other amplified sound on the Premises shall not exceed the maximum decibel levels or the time restrictions specified in Chapter 11.12 of the Code of the City of Annapolis, as may be amended.

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

h. The Tenant may install or otherwise place non-permanent decorative, architectural, or vegetative elements to the Premises (collectively, the "Decorations"), and may also place its own tables, chairs, benches, tents, lighting fixtures, and similar items (collectively, the "Furnishings") on the Premises for use as outdoor dining during the regular business hours of the Tenant's business establishment. The Tenant shall use good faith efforts to purchase and install all of the new Decorations and the new Furnishings on the Premises no later than March 1, 2022, which shall replace the Decorations and Furnishings currently existing as of the date of this Lease. All such Decorations and Furnishings shall be approved by the City's Chief of Historic Preservation prior to use on-site. The design of all such Decorations and Furnishings, and their layout within the leased area, shall be developed in coordination with and under the advisement of the City Dock Action Committee (CDAC) Design Subcommittee, and will require an HPC Certificate of Approval (COA). The COA may be issued based on new guidelines developed for outside dining areas in addition to current guidelines for sidewalk cafes. The Tenant shall keep the Premises, any Decorations, and any Furnishings free of trash and debris, and in a clean, safe, orderly and functioning (or properly stored) manner at all times.

i. Regardless of any established business hours, the Tenant shall not use the Premises for any purpose, besides storage of the Decorations and tables, chairs, benches, tents, and similar items, between the hours of 11:00 PM and 7:00 AM.

3. Tenant's Responsibilities for Management of the Premises and the Property.

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

- a. Oversight of all operations at the Premises;
- b. Quality assurance for all aspects of the Premises' areas;
- c. Development and assurance of proper security procedures for the Premises; and
- d. Coordination with all of the Other Tenants for the following:
 - (1) Deliveries to any properties abutting or adjacent to the Property;
 - (2) City access pursuant to Paragraph 20(a);
 - (3) Access by any regulated utility company pursuant to Paragraph 20(c);
 - (4) Access for private and City-contracted trash, recycling and yard waste collection services pursuant to Paragraph 20(d);
 - (5) Access through the Property by certain private property owners pursuant to Paragraph 20(e); and
 - (6) Maintenance of barriers around the Property as required and approved by the City, including any needed coordination for moving/removal of such barriers to provide any access to the Property required by this Lease.

4. Rent; Security Deposit.

a. As annual rent for the Premises, the Tenant shall pay unto the City Thirty-Three Thousand Eight Hundred Sixty-Six Dollars and Fifty-Eight Cents (\$33,866.58) payable in twelve (12) equal monthly payments of Two Thousand Eight Hundred Twenty-Two Dollars and Twenty-Two Cents (\$2,822.22) (collectively, the "Rent"). Each payment shall be made promptly when due, in advance, on the first day of each month during the Original Term and any Renewal Term, without deduction, setoff or counterclaim whatsoever, and without demand. The City shall prorate the Rent, and any Additional Rent, if the Effective Date occurs later than July 1, 2021. All payments shall be made payable to the "City of Annapolis" and shall be sent or delivered to the Finance Director, Finance Department, City Hall, 160 Duke of Gloucester Street, Annapolis, Maryland 21401. Rent is based, in part, on a total charge of \$22.50 per parking spot per day for all five tenants (i.e. the Tenant and the Other Tenants), to be included as part of the Premises and/or the leased premises of the Other Tenants. The Rent shall escalate at a rate of two percent (2.0%) on July 1, 2022 and on each July 1st thereafter.

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

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

d. In the event the Rent or Additional Rent under this Lease, or any part thereof, shall remain unpaid for a period of fifteen (15) business days after the day on which it is due, then in addition to all other sums due by the Tenant under this Lease, the Tenant shall pay the City as Additional Rent: (1) late fees equal to five percent (5%) of the unpaid amount, and (2) if an action of any type is filed in any court, reasonable attorney's fees.

e. No later than the Effective Date, the Tenant shall deposit with the City's Finance Director, 160 Duke of Gloucester Street, Annapolis MD, 21401, the amount of Five Thousand Dollars and No Cents (\$5,000.00) (the "Security Deposit"). The City shall have no obligation to pay any interest on the Security Deposit, and may commingle it in an account with other funds. The City, at its option, may apply any part of the Security Deposit towards the payment of outstanding amounts due under this Lease, provided always that the Tenant's liability under this Lease shall not thereby be discharged. Upon any uncured monetary default, the City may request, and the Tenant shall be obligated to deposit, additional security to secure the Tenant's performance under this Lease within ten (10) business days to restore the Security Deposit to its original amount. If not used, the Security Deposit shall be returned to the Tenant within thirty (30) calendar days after the Tenant vacates the Premises in accordance with Paragraph 24.

5. Quiet Enjoyment.

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

6. Utilities/Services.

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

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

c. The Tenant, at its sole cost and expense, shall arrange and pay for any janitorial services that are necessary for the operation and upkeep of the Premises.

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

e. The Tenant, at its sole cost and expense, shall arrange and pay for the removal of all snow and ice from the driveways, roadways, stairs, walkways, sidewalks, parking areas and other rights-of-way located on the Premises.

7. Tenant Equipment, Furnishings, Personal Property.

The Tenant shall retain ownership of all of its trade and business equipment, furnishings and personal property from time to time installed on the Premises. No fixtures, equipment or furnishings may be attached or affixed to the exterior of the surrounding buildings. The Tenant may remove any such fixtures, equipment or furnishings at any such time during the Term and shall remove all of it prior to the expiration of the Lease. Removal shall not cause any damage to the Premises or the Property. The Tenant shall pay for any damages it may cause, which shall be due and payable by the Tenant within thirty (30) calendar days of City invoicing. Any such personal property not removed at the expiration of the Term shall be handled in accordance with Paragraph 24 of this Lease.

8. Repairs and Maintenance.

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

b. The Tenant shall not make or cause to be made any permanent alterations, additions, or improvements to the Premises without obtaining the prior written consent of the City which will be granted in the City's sole and absolute discretion.

c. Prior to the Tenant repairing, replacing or otherwise altering any aspect of the Premises or the Property, the Tenant shall provide the City with thirty (30) calendar day prior written notice specifying the need for and nature of any and all such repairs, replacements or alternations, and providing the City with a copy of all applicable contracts or agreements with any third party hired by the Tenant to perform such repairs, replacements or alterations. The Tenant or its contractors shall not start or undertake any such repairs, replacements or alterations without the prior written approval of the City, and without first obtaining all necessary permits and governmental approvals. Such repairs, replacements or alterations shall be made and rendered by professional contractors licensed in the State of Maryland, be done in a good and workmanlike manner, and shall comply in all respects with all applicable federal, state, local and City laws, ordinances and regulations, including, but not limited to, zoning, building and fire code requirements. The Tenant agrees that all such improvements shall become the property of the City when made, and further, that the Tenant shall be entitled to no reimbursement or re-payment for any such improvements.

d. The City shall have no liability to the Tenant by reason of any inconvenience, annoyance, interruption, or injury to business or other use or occupancy arising from making any

repairs or changes that the City is required or permitted to make in or to any portion of the Premises or the Property, by any other tenant's lease, or by law.

9. Signs.

The Tenant shall not to place or maintain any sign, billboard, marquee, awning, decoration, placard, lettering, advertising matter or other thing of any kind, whether permanent or temporary, on the Premises without first obtaining ~~the City's written consent a sign permit per~~ Planning and Zoning code section 21.070.30 and 21.070.090 which requires approval from the Historic Preservation Commission using the HPC Design Guidelines for signs. Approval is handled by the Chief of Preservation using current Administrative Approval Guidelines. The Tenant shall maintain any sign, billboard, marquee, awning, decoration, placard, lettering or advertising matter or other thing of any kind, as may be approved by the City, and shall repair and replace when necessary to keep in good condition and repair at all times.

10. Driveways, Footways and Parking Areas.

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

11. Non-Discrimination.

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

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

12. No Assignment or Sublease.

The Tenant shall not assign its rights to this Lease to any third parties nor shall it enter into any subleases with other parties, nor shall Tenant permit other persons or parties to occupy the Premises, nor shall it grant any license or concessions to third parties for other uses of the Premises without the prior written consent of the City.

13. Security, Property Loss Damage.

a. The Tenant assumes all risks associated with the security of the Premises. The City shall have no obligation or duty with regard to security. The Tenant shall police, light and maintain the Premises in a clean, safe and secure manner.

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

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

14. Compliance with Laws.

a. The Tenant, at its sole cost and expense, shall keep in force all licenses, consents and permits necessary for the lawful use of the Premises for the purposes of this Lease. The Tenant, at its sole cost and expense, shall promptly comply with and do all things required by any notice served upon it or upon the City in relation to the Premises or any part thereof, from any of the departments or agencies of the City, a county, the State of Maryland, or the United States, if the same shall be caused by the Tenant's use of the Premises. The Tenant shall pay all costs, expenses, claims, fines, penalties, and damages that may in any manner arise out of the failure of the Tenant to comply. Failure to comply with this Paragraph shall constitute a breach of this Lease, and the City may terminate this Lease for default in accordance with Paragraph 22.

b. The Tenant shall have a reasonable time not to exceed ten (10) calendar days to comply with any notice pursuant to Paragraph 14(a), unless such violation relates to public safety, in which case the City may order a temporary suspension of the Tenant's business and other operations pending compliance.

15. Insurance.

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

1. Commercial General Liability Insurance Policy, including contractual liability and property liability insurance for the Premises, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of this Lease, but no less than \$1,000,000.00 per person and \$2,000,000.00 per occurrence in the aggregate, using a Combined Single Limit for bodily injury and property damage.

2. Workers' Compensation as required by Maryland law and, when required, the U.S. Longshoremen's and Harbor Workers' Compensation Act, including standard Other States coverage; Employers' Liability coverage with limits of at least \$100,000.00 each accident,

\$100,000.00 each employee disease, and \$500,000.00 disease policy limit.

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

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

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

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

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

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

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

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

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

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

16. Indemnification.

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

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

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

d. The City, in its sole discretion, may participate in handling its own defense or exclusively handle its own defense, and select its own attorneys, including the City Attorney. The indemnification for reasonable attorney fees applies whether or not the City Attorney or other attorney handles the defense.

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

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

17. Impairment of the City's Title.

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

18. Liens and Encumbrances.

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

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

19. Taxes and Assessments.

a. The Tenant shall pay all impositions including all state, county and City taxes (including real estate ad valorem, sales, use, and occupancy taxes), and assessments of any kind and nature whatsoever, including all interest and penalties on them, which shall or may accrue or be incurred during the Term of this Lease. The Tenant shall pay all such taxes and assessments before any fine, penalty, interest, or cost may be added for nonpayment, and shall furnish to the City, on request, official receipts or other satisfactory proof evidencing such payment. If any tax or assessment is payable in installments over a period of years, the Tenant shall be liable only for payment of those installments falling due and payable during the Term, with appropriate pro-rata in case of fractional years.

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

20. Right of Entry.

a. The City and its employees, representatives, agents, and servants, including any builder or contractor employed by the City, shall have the absolute unconditional right at any and all reasonable times, after not less than twenty-four (24) hours notice to the Tenant (except in the case of an emergency where no such notice is required), to enter the Premises or the Property for any of the following purposes: (a) to inspect the Premises and the Property; (b) to make such repairs and/or changes in the Premises or the Property as the City may deem necessary or proper; (c) to access any City owned or maintained utility; (d) to enforce and carry out any provision of this Lease; (e) to perform any snow removal or related operations on the Property and any adjacent roadways; (f) for any purpose relating to the safety, protection or preservation of the Premises or the Property; or (g) for any other purpose related to the enforcement of this Lease.

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

c. Any regulated utility company and its employees, representatives, agents, and servants, including any contractor employed by such company, shall have the absolute unconditional right at any and all reasonable times, after not less than twenty-four (24) hours notice to the Tenant (except in the case of an emergency where no such notice is required), to enter the Premises or the Property to access any company owned or maintained utility.

d. The Tenant, in coordination with the Other Tenants as specified in Paragraph 3, shall provide for regular access to the Property, and the Premises as applicable, for both private and City-contracted trash and recycling services.

e. The Tenant, in coordination with the Other Tenants as specified in Paragraph 3, shall provide for access through the Property, and the Premises as applicable, on an as-requested basis for private property owners abutting to or adjacent to the Property as relates to larger delivery vehicles, moving vehicles, or construction vehicles.

21. Reservation of Governmental Authority.

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

22. Defaults or Breach.

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

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

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

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

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

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

6. Failure by the Tenant to make any payment of rent, mortgage, loan, or other payments required to be made by the Tenant in order to retain ownership, tenancy, or custody and control of the primary business premises.

7. Being delinquent on any other City obligation, tax, payment, or other liability, including any other leases or agreements with the City.

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

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

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

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

d. The City, in its sole discretion, may afford the Tenant a reasonable time to cure any default or breach of this Lease before declaring a Default or Breach and terminating this Lease.

23. Termination for Convenience.

Either party may terminate this Lease for convenience, for any reason, and at any time by providing sixty (60) calendar days prior written notice to the other party. Any such termination of this Lease shall not discharge the Tenant from any obligation it may have to the City by reason of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events or basis of which shall occur or arise) prior to such termination, whether the same be known or unknown at the time of such termination. The City shall prorate the Rent, and any Additional Rent, as of the date of termination for convenience.

24. Surrender of Premises.

a. On the last day or earlier termination of this Lease, the Tenant shall vacate the Premises and leave it in good condition and repair, normal wear and tear excepted. If the Premises are not surrendered when required, the Tenant shall indemnify, defend and hold the Indemnified Parties harmless against loss or liability resulting from the delay by the Tenant in vacating the Premises, including, without limitation, any claims made by any succeeding tenant or other occupant founded on such delay. Any holding over with the consent of the City after the

termination of this Lease shall be construed to be a tenancy from month-to-month upon the same terms and conditions as provided in this Lease, to the extent applicable.

b. On the last day or earlier termination of this Lease, and in accordance with Paragraph 7 of this Lease, the Tenant shall, within thirty (30) calendar days and at its own cost and expense, dismantle and remove all of its personal property from the Premises. Any such property not removed at the expiration of this Lease in accordance with the preceding sentence and the Tenant's continued failure to remove the same within thirty (30) calendar days after receipt of notice from the City, shall be deemed abandoned and, at the election of the City, shall become the property of the City without payment of any kind to the Tenant, without increasing the City's liability to the Tenant, and for any disposition of it as the City decides to make.

c. Within ten (10) calendar days of vacating, the City shall tour the Premises, with the Tenant present if possible, to determine the condition of the Premises. Any items determined to be in need of correction or repair shall be corrected or repaired by the City, and shall be invoiced by the City and paid by the Tenant within thirty (30) calendar days of such invoicing.

25. Damage to Premises.

In case of any substantial loss of or damage to the Premises as the result of a taking under the power of eminent domain, or by fire, storm or other casualty or force majeure event, the City in its sole and absolute discretion may determine whether or not, and to what extent, to repair or restore any of the Premises, or to terminate this Lease pursuant to Paragraph 23. If the City decides to repair or restore, and any portion of the Premises remains suitable for the Tenant's use, then the Tenant shall be entitled to utilize that portion of the Premises. The City, as applicable and appropriate, shall prorate any Rent due by the Tenant to account for any decreased size of the Premises. If the City either decides not to repair and restore the Premises, and/or repairs and restores the Premises, but no portion of the Premises remains suitable for the Tenant's use, then this Lease shall be terminated pursuant to Paragraph 23. It shall be the sole responsibility of the Tenant to restore, repair and/or remove its own personal property, fixtures and equipment.

26. Modification.

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

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

27. Representations and Warranties.

The Tenant represents and warrants to the City that:

a. The Tenant is a limited liability company organized under the laws of the State of Maryland, and is thus qualified to do business in and is in good standing with the State of Maryland, and is duly authorized according to its governing documents to conduct the business in which it is engaged and as described in this Lease.

- b. The Tenant is authorized to execute, deliver and perform this Lease.
- c. The Tenant shall not violate the order of any court or governmental authority or breach any contract or other agreement by entering into this Lease.
- d. There are no actions, suits, etc. pending or, to the best of its knowledge, threatened against the Tenant or which might adversely affect the Tenant's right to enter into or perform under this Lease.
- e. The Tenant has been represented (or has had the opportunity to be represented) in the execution of this Lease by independent legal counsel.
- f. There exists no actual or potential conflict of interest between its performance under this Lease and its engagement or involvement in any other agreement, or personal or professional activities. In the event such conflict or potential conflict arises during the Term of this Lease, or any renewal thereof, the Tenant shall immediately advise the City in writing thereof.
- g. The representations set forth in the Lease shall be true and valid throughout the Term.

28. Access to Records.

- a. At any time during normal business hours with reasonable prior notice from the City, and as often as the City may deem necessary, the Tenant shall make available to and allow inspection and copying by the City, its employees or agents, of all books, records, accounts, reports, information and documentation of the Tenant related to the subject matter of this Lease, including, but not limited to, all contracts, invoices, payroll, and financial audits.
- b. The Tenant shall maintain all books, records, accounts, reports, information and documentation required under this Lease for a period of at least three (3) years after the date of termination of this Lease including any renewals, except in the event of litigation or settlement of claims arising from the performance of this Lease, in which case the Tenant shall do so until three (3) years after final adjudication of such litigation or settlement of claims.

29. Remedies Cumulative and Concurrent.

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

30. Waiver of Remedies for Breach or Default.

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

later time or times.

31. Independent Contractor Status.

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

32. Binding Effect.

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

33. Governing Law.

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

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

34. Recitals.

The Recitals of this Lease are incorporated into this Lease.

35. Severability.

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

36. Survival.

Those paragraphs in this Lease which by their nature are intended to survive shall survive the termination of this Lease.

37. Time is of the Essence.

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

38. Authorization.

This Lease is authorized by the City Council pursuant to Ordinance O-30-21.

39. Counterparts.

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

40. Notice.

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

- To the City: City Manager
160 Duke of Gloucester Street
Annapolis, Maryland 21401
- With a Copy to: City Attorney
160 Duke of Gloucester Street
Annapolis, Maryland 21401
- To the Tenant: Bembe Beach, LLC
20 Market Space
Annapolis, Maryland 21401
Attn: Jeremy Black, jeremy@federalhouse.com

41. Guaranty for Other Tenants.

If any of the Other Tenants default, abandon, or otherwise stop using their leased portion(s) of the Property during the Original Term or any Renewal Term (each a "Defaulted Lease"), then the Tenant shall coordinate with the remaining Other Tenants to have either the Tenant or one of the remaining Other Tenants assume the Defaulted Lease, with the Defaulted Lease cost paid by the assuming party. Such assumption of a Defaulted Lease shall be documented through a written amendment to the assuming party's lease for the Property.

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

WITNESS:

BEMBE BEACH, LLC

By: _____
Name: Jeremy Black (Seal)
Title:

ATTEST:

CITY OF ANNAPOLIS

Regina C. Watkins-Eldridge, MMC,
City Clerk

By: _____
Gavin Buckley, Mayor (Seal)

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

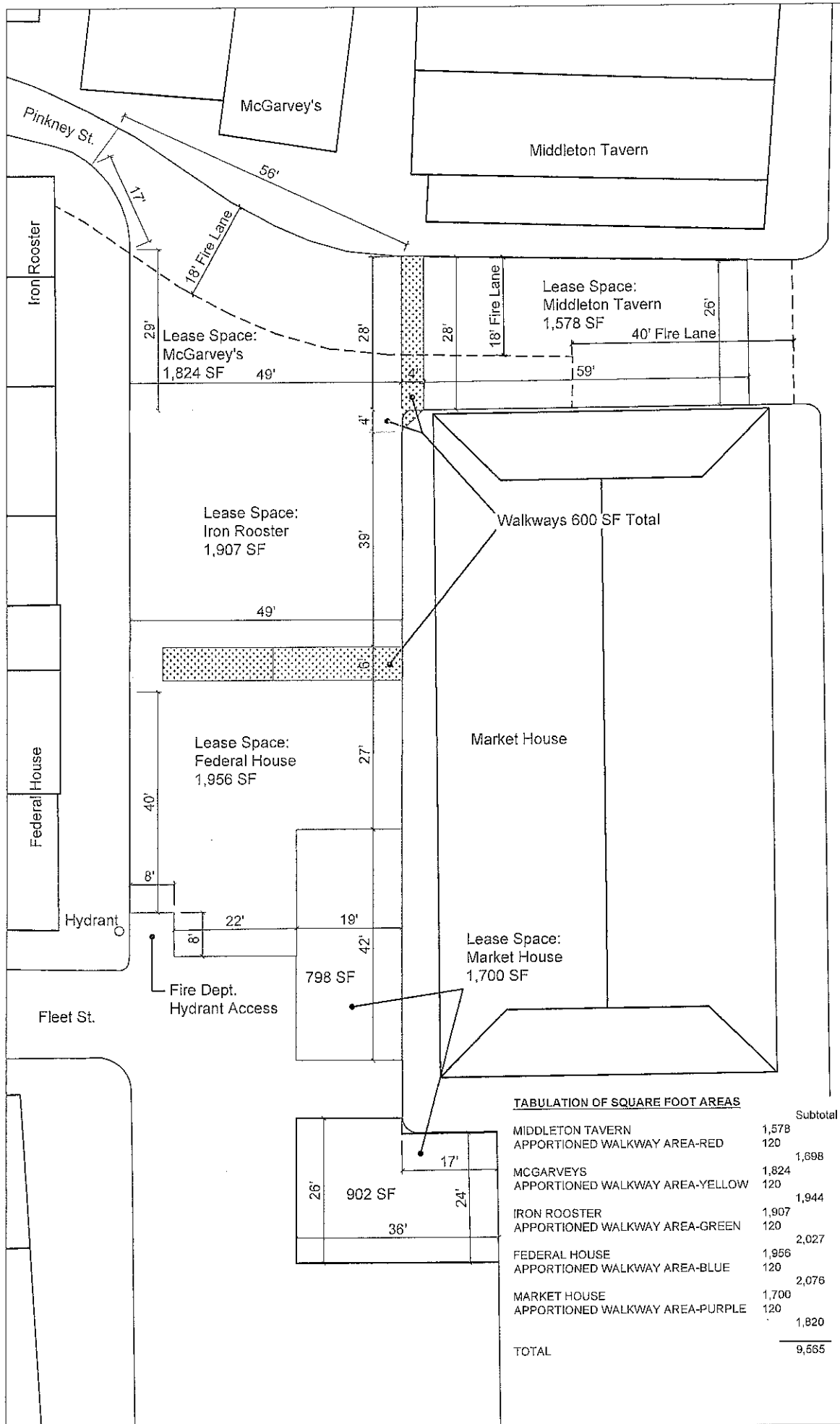
Office of Law
D. Michael Lyles, City Attorney

**ATTACHMENT A
DEED**

See attached pages.

**ATTACHMENT B
PREMISES**

See attached page.



TABULATION OF SQUARE FOOT AREAS

	Subtotal
MIDDLETON TAVERN	1,578
APPORTIONED WALKWAY AREA-RED	120
	1,698
MCGARVEYS	1,824
APPORTIONED WALKWAY AREA-YELLOW	120
	1,944
IRON ROOSTER	1,907
APPORTIONED WALKWAY AREA-GREEN	120
	2,027
FEDERAL HOUSE	1,956
APPORTIONED WALKWAY AREA-BLUE	120
	2,076
MARKET HOUSE	1,700
APPORTIONED WALKWAY AREA-PURPLE	120
	1,820
TOTAL	9,555

**ATTACHMENT C
PURPOSE**

The following Tenant business-related uses are permitted under the terms of the Lease, and considered as part of the Purpose as defined in Paragraph 2(a) of the Lease:

- 1) Outdoor dining;
- 2) Tenant business-related special events;
- 3) Festivals;
- 4) Markets;
- 5) Event watch parties;
- 6) Movie nights;
- 7) Live music;
- 8) Recreational events;
- 9) Vendor booths;
- 10) Charity events; and
- 11) Tented events for inclement/cold weather.

These uses are subject to the terms and conditions of the Lease, as well as all applicable laws, regulations, and other statutory permitted governmental oversight. For uses numbered 2 through 10, the Tenant shall complete and submit a City Special Events Application and Agreement to the City Development and Events Specialist at least thirty (30) calendar days in advance of any such use, not for approval, but for informational purposes only to allow for coordination of City resources, traffic control, and emergency management as applicable. The Tenant shall not be required to pay any Application Fees, but may be required to pay Location Fees and/or Service Fees, as defined in that Application, as applicable to each use.



Chartered 1708

City of Annapolis
160 Duke of Gloucester Street
Annapolis, MD 21401

LEASE AGREEMENT BETWEEN THE CITY OF ANNAPOLIS AND IRON ROOSTER-ANNAPOLIS, LLC FOR MARKET SPACE

THIS LEASE AGREEMENT ("Lease") is made this ____ day of _____ 2021, by and between the City of Annapolis, a municipal corporation of the State of Maryland (the "City"), and IRON ROOSTER-ANNAPOLIS, LLC, a Maryland limited liability company (the "Tenant").

WHEREAS, the City is the fee simple owner of a parcel of land consisting of nineteen (19) marked parking spaces and related roadways, located at Market Space, Annapolis, Maryland 21401 (collectively, the "Property"), and as more particularly described in a deed dated July 28, 1784, and attached hereto and incorporated herein as Attachment A; and

WHEREAS, the Tenant operates a business located adjacent to the Property; and

WHEREAS, the Tenant wishes to lease a portion of the Property, including one hundred twenty (120) square feet of exclusive walkway area, together with a right to use, in common with others, adjoining sidewalks abutting the Property, all as further depicted in Attachment B (the "Premises") attached hereto and incorporated herein, but excluding parking meters, bollards and chains, and parking and traffic control signage; and

WHEREAS, the Tenant wishes to lease the Premises for the purpose of extending its indoor restaurant seating as outdoor dining, and related special event, festival, and market activities, in connection with its business as further described herein; and

WHEREAS, McGarvey's Annapolis, LLC, Bembe Beach, LLC, New Market House LLC, and Middleton's Tavern, Ltd. (collectively, the "Other Tenants") wish to lease the remaining portions of the Property for similar purposes, as depicted in Attachment B, and in accordance with separate lease agreements with the City; and

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

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

1. Term; Tenant Termination with Start of the City Dock Project.

a. The City leases to the Tenant and the Tenant hereby leases from the City Premises for a Term commencing on ~~the Effective Date, as defined herein~~ November 1, 2021, and

terminating on June 30, 2022 (the "Original Term"), unless terminated earlier in accordance with the terms of this Lease. ~~For purposes of this Lease, the "Effective Date" shall be that date falling thirty (30) calendars after the expiration or termination of the State of Maryland State of Emergency related to the COVID-19 Pandemic.~~

b. Provided that the Tenant is not otherwise in default hereunder and continues to occupy the Premises, and subject to the City's termination rights herein, the Tenant shall have the option to renew this Lease for successive terms of one (1) year upon the same terms and conditions herein except as may otherwise be provided for in a written amendment to this Lease (each a "Renewal Term" and collectively the "Renewal Terms"); provided that regardless of any Term or Renewal Term currently in effect, the Lease shall expire on the Start of the City Dock Project, as defined herein. Each Renewal Term shall commence and run with the City fiscal year (July 1st – June 30th). If the Tenant elects to exercise its option, it shall give the City at least sixty (60) calendar days written notice before the expiration of the Term, or any Renewal Term thereof.

c. For purposes of this Lease, "Start of the City Dock Project" shall be that date on which construction of the revitalization work at Market Space begins. The City shall provide the Tenant prior notice of the estimated Start of the City Dock Project date at least sixty (60) calendar days prior to the estimated date and the exact Start of the City Dock Project date as soon as reasonably established by the City. Within thirty (30) calendar days of such notice, the Tenant may terminate this Lease for convenience by providing written notice to the City that specifies a termination date prior to the Start of the City Dock Project date. Any such termination of this Lease by the Tenant shall not discharge the Tenant from any obligation it may have to the City by reason of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events or basis of which shall occur or arise) prior to such termination, whether the same be known or unknown at the time of such termination. The City shall prorate the Rent, and any Additional Rent, as of the date of termination for convenience.

2. Use of Premises.

a. The Tenant may use and occupy the Premises during the Term and any Renewal Term of this Lease only for the purpose of outdoor dining, and related special event, festival, market, and similar activities, in connection with its business (the "Purpose"), as further described in Attachment C attached hereto and incorporated herein, and for no other purpose whatsoever. The space on the Property leased to the Other Tenants is expressly and specifically excluded from this Lease, and the Other Tenants shall not be considered parties to or third party beneficiaries of this Lease.

b. The Tenant accepts the Premises in "as is" condition. The City makes no representation or warranty with respect to the condition or state of the land, the Property, or the Premises, or its fitness for any particular use, and the City shall not be liable for any latent or patent defect thereon. Unless as otherwise expressly provided in this Lease, the City does not make, and specifically disclaims, any representations, warranties or covenants of any kind or character, express or implied, with respect to the nature, condition, economical, functional, environmental or physical condition of the Premises. The Tenant represents and warrants to the City that: (1) the Tenant is knowledgeable in matters of real estate or had an opportunity to consult with a real estate professional; (2) the Tenant is relying solely on the Tenant's own expertise and/or the expertise of the Tenant's consultants with respect to the Premises; (3) the Tenant shall

assume all risk that adverse matters, including, but not limited to, adverse physical and environmental conditions, may not have been revealed through the Tenant's, or the Tenant's consultants', inspections, tests, studies, and investigations of the Premises.

c. The Tenant shall not use or occupy or permit the Premises, or any part thereof including, but not limited to, the Property, to be used or occupied, nor do or permit anything to be done in or on the Premises in a manner which would in any way (1) violate any of the terms of this Lease; (2) make it difficult for either the City or the Tenant to obtain fire or other insurance required by this Lease at standard rates; (3) cause or create a public or private nuisance in or on the Premises or the Property; (4) tend to impair or interfere with the character, reputation or appearance of the Premises or the Property; or (5) impede or interfere with the provision of any governmental services to the Property and neighboring residents and businesses, including but not limited, to fire and emergency services, utilities, police and public works.

d. The Tenant shall comply with all requirements of the City Fire Marshal's Office in its use of the Premises and the Property. The Tenant shall insure that no personal property, structures, or other materials remain in the fire lane (the "Fire Lane"), as depicted on Attachment B, at any time when the Tenant's business operations are closed or otherwise have no available staff to remove personal property from the Fire Lane.

e. The Tenant shall comply with all requirements of the Americans with Disabilities Act (ADA) in its use of the Premises, the Property, and any abutting public walkways including, but limited to any sidewalks, and any private property entrances and exits.

f. Music or other amplified sound on the Premises shall not exceed the maximum decibel levels or the time restrictions specified in Chapter 11.12 of the Code of the City of Annapolis, as may be amended.

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

h. The Tenant may install or otherwise place non-permanent decorative, architectural, or vegetative elements to the Premises (collectively, the "Decorations"), and may also place its own tables, chairs, benches, tents, lighting fixtures, and similar items (collectively, the "Furnishings") on the Premises for use as outdoor dining during the regular business hours of the Tenant's business establishment. The Tenant shall use good faith efforts to purchase and install all of the new Decorations and the new Furnishings on the Premises no later than March 1, 2022, which shall replace the Decorations and Furnishings currently existing as of the date of this Lease. All such Decorations and Furnishings shall be approved by the City's Chief of Historic Preservation prior to use on-site. The design of all such Decorations and Furnishings, and their layout within the leased area, shall be developed in coordination with and under the advisement of the City Dock Action Committee (CDAC) Design Subcommittee, and will require an HPC Certificate of Approval (COA). The COA may be issued based on new guidelines developed for outside dining areas in addition to current guidelines for sidewalk cafes. The Tenant shall keep the Premises, any Decorations, and any Furnishings free of trash and debris, and in a clean, safe, orderly and functioning (or properly stored) manner at all times.

i. Regardless of any established business hours, the Tenant shall not use the Premises for any purpose, besides storage of the Decorations and tables, chairs, benches, tents, and similar items, between the hours of 11:00 PM and 7:00 AM.

3. Tenant's Responsibilities for Management of the Premises and the Property.

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

- a. Oversight of all operations at the Premises;
- b. Quality assurance for all aspects of the Premises' areas;
- c. Development and assurance of proper security procedures for the Premises; and
- d. Coordination with all of the Other Tenants for the following:
 - (1) Deliveries to any properties abutting or adjacent to the Property;
 - (2) City access pursuant to Paragraph 20(a);
 - (3) Access by any regulated utility company pursuant to Paragraph 20(c);
 - (4) Access for private and City-contracted trash, recycling and yard waste collection services pursuant to Paragraph 20(d);
 - (5) Access through the Property by certain private property owners pursuant to Paragraph 20(e); and
 - (6) Maintenance of barriers around the Property as required and approved by the City, including any needed coordination for moving/removal of such barriers to provide any access to the Property required by this Lease.

4. Rent; Security Deposit.

a. As annual rent for the Premises, the Tenant shall pay unto the City Thirty-Three Thousand Sixty-Seven Dollars and Twenty-Three Cents (\$33,067.23) payable in twelve (12) equal monthly payments of Two Thousand Seven Hundred Fifty-Five Dollars and Sixty Cents (\$2,755.60) (collectively, the "Rent"). Each payment shall be made promptly when due, in advance, on the first day of each month during the Original Term and any Renewal Term, without deduction, setoff or counterclaim whatsoever, and without demand. The City shall prorate the Rent, and any Additional Rent, if the Effective Date occurs later than July 1, 2021. All payments shall be made payable to the "City of Annapolis" and shall be sent or delivered to the Finance Director, Finance Department, City Hall, 160 Duke of Gloucester Street, Annapolis, Maryland 21401. Rent is based, in part, on a total charge of \$22.50 per parking spot per day for all five tenants (i.e. the Tenant and the Other Tenants), to be included as part of the Premises and/or the leased premises of the Other Tenants. The Rent shall escalate at a rate of two percent (2.0%) on July 1, 2022 and on each July 1st thereafter.

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

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

d. In the event the Rent or Additional Rent under this Lease, or any part thereof, shall remain unpaid for a period of fifteen (15) business days after the day on which it is due, then in addition to all other sums due by the Tenant under this Lease, the Tenant shall pay the City as Additional Rent: (1) late fees equal to five percent (5%) of the unpaid amount, and (2) if an action of any type is filed in any court, reasonable attorney's fees.

e. No later than the Effective Date, the Tenant shall deposit with the City's Finance Director, 160 Duke of Gloucester Street, Annapolis MD, 21401, the amount of Five Thousand Dollars and No Cents (\$5,000.00) (the "Security Deposit"). The City shall have no obligation to pay any interest on the Security Deposit, and may commingle it in an account with other funds. The City, at its option, may apply any part of the Security Deposit towards the payment of outstanding amounts due under this Lease, provided always that the Tenant's liability under this Lease shall not thereby be discharged. Upon any uncured monetary default, the City may request, and the Tenant shall be obligated to deposit, additional security to secure the Tenant's performance under this Lease within ten (10) business days to restore the Security Deposit to its original amount. If not used, the Security Deposit shall be returned to the Tenant within thirty (30) calendar days after the Tenant vacates the Premises in accordance with Paragraph 24.

5. Quiet Enjoyment.

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

6. Utilities/Services.

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

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

c. The Tenant, at its sole cost and expense, shall arrange and pay for any janitorial services that are necessary for the operation and upkeep of the Premises.

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

e. The Tenant, at its sole cost and expense, shall arrange and pay for the removal of all snow and ice from the driveways, roadways, stairs, walkways, sidewalks, parking areas and other rights-of-way located on the Premises.

7. Tenant Equipment, Furnishings, Personal Property.

The Tenant shall retain ownership of all of its trade and business equipment, furnishings and personal property from time to time installed on the Premises. No fixtures, equipment or furnishings may be attached or affixed to the exterior of the surrounding buildings. The Tenant may remove any such fixtures, equipment or furnishings at any such time during the Term and shall remove all of it prior to the expiration of the Lease. Removal shall not cause any damage to the Premises or the Property. The Tenant shall pay for any damages it may cause, which shall be due and payable by the Tenant within thirty (30) calendar days of City invoicing. Any such personal property not removed at the expiration of the Term shall be handled in accordance with Paragraph 24 of this Lease.

8. Repairs and Maintenance.

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

b. The Tenant shall not make or cause to be made any permanent alterations, additions, or improvements to the Premises without obtaining the prior written consent of the City which will be granted in the City's sole and absolute discretion.

c. Prior to the Tenant repairing, replacing or otherwise altering any aspect of the Premises or the Property, the Tenant shall provide the City with thirty (30) calendar day prior written notice specifying the need for and nature of any and all such repairs, replacements or alternations, and providing the City with a copy of all applicable contracts or agreements with any third party hired by the Tenant to perform such repairs, replacements or alterations. The Tenant or its contractors shall not start or undertake any such repairs, replacements or alterations without the prior written approval of the City, and without first obtaining all necessary permits and governmental approvals. Such repairs, replacements or alterations shall be made and rendered by professional contractors licensed in the State of Maryland, be done in a good and workmanlike manner, and shall comply in all respects with all applicable federal, state, local and City laws, ordinances and regulations, including, but not limited to, zoning, building and fire code requirements. The Tenant agrees that all such improvements shall become the property of the City when made, and further, that the Tenant shall be entitled to no reimbursement or re-payment for any such improvements.

d. The City shall have no liability to the Tenant by reason of any inconvenience, annoyance, interruption, or injury to business or other use or occupancy arising from making any

repairs or changes that the City is required or permitted to make in or to any portion of the Premises or the Property, by any other tenant's lease, or by law.

9. Signs.

The Tenant shall not to place or maintain any sign, billboard, marquee, awning, decoration, placard, lettering, advertising matter or other thing of any kind, whether permanent or temporary, on the Premises without first obtaining the City's written consent a sign permit per Planning and Zoning code section 21.070.30 and 21.070.090 which requires approval from the Historic Preservation Commission using the HPC Design Guidelines for signs. Approval is handled by the Chief of Preservation using current Administrative Approval Guidelines. The Tenant shall maintain any sign, billboard, marquee, awning, decoration, placard, lettering or advertising matter or other thing of any kind, as may be approved by the City, and shall repair and replace when necessary to keep in good condition and repair at all times.

10. Driveways, Footways and Parking Areas.

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

11. Non-Discrimination.

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

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

12. No Assignment or Sublease.

The Tenant shall not assign its rights to this Lease to any third parties nor shall it enter into any subleases with other parties, nor shall Tenant permit other persons or parties to occupy the Premises, nor shall it grant any license or concessions to third parties for other uses of the Premises without the prior written consent of the City.

13. Security, Property Loss Damage.

a. The Tenant assumes all risks associated with the security of the Premises. The City shall have no obligation or duty with regard to security. The Tenant shall police, light and maintain the Premises in a clean, safe and secure manner.

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

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

14. Compliance with Laws.

a. The Tenant, at its sole cost and expense, shall keep in force all licenses, consents and permits necessary for the lawful use of the Premises for the purposes of this Lease. The Tenant, at its sole cost and expense, shall promptly comply with and do all things required by any notice served upon it or upon the City in relation to the Premises or any part thereof, from any of the departments or agencies of the City, a county, the State of Maryland, or the United States, if the same shall be caused by the Tenant's use of the Premises. The Tenant shall pay all costs, expenses, claims, fines, penalties, and damages that may in any manner arise out of the failure of the Tenant to comply. Failure to comply with this Paragraph shall constitute a breach of this Lease, and the City may terminate this Lease for default in accordance with Paragraph 22.

b. The Tenant shall have a reasonable time not to exceed ten (10) calendar days to comply with any notice pursuant to Paragraph 14(a), unless such violation relates to public safety, in which case the City may order a temporary suspension of the Tenant's business and other operations pending compliance.

15. Insurance.

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

1. Commercial General Liability Insurance Policy, including contractual liability and property liability insurance for the Premises, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of this Lease, but no less than \$1,000,000.00 per person and \$2,000,000.00 per occurrence in the aggregate, using a Combined Single Limit for bodily injury and property damage.

2. Workers' Compensation as required by Maryland law and, when required, the U.S. Longshoremen's and Harbor Workers' Compensation Act, including standard Other States coverage; Employers' Liability coverage with limits of at least \$100,000.00 each accident,

\$100,000.00 each employee disease, and \$500,000.00 disease policy limit.

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

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

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

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

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

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

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

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

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

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

16. Indemnification.

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

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

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

d. The City, in its sole discretion, may participate in handling its own defense or exclusively handle its own defense, and select its own attorneys, including the City Attorney. The indemnification for reasonable attorney fees applies whether or not the City Attorney or other attorney handles the defense.

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

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

17. Impairment of the City's Title.

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

18. Liens and Encumbrances.

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

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

19. Taxes and Assessments.

a. The Tenant shall pay all impositions including all state, county and City taxes (including real estate ad valorem, sales, use, and occupancy taxes), and assessments of any kind and nature whatsoever, including all interest and penalties on them, which shall or may accrue or be incurred during the Term of this Lease. The Tenant shall pay all such taxes and assessments before any fine, penalty, interest, or cost may be added for nonpayment, and shall furnish to the City, on request, official receipts or other satisfactory proof evidencing such payment. If any tax or assessment is payable in installments over a period of years, the Tenant shall be liable only for payment of those installments falling due and payable during the Term, with appropriate pro-ration in case of fractional years.

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

20. Right of Entry.

a. The City and its employees, representatives, agents, and servants, including any builder or contractor employed by the City, shall have the absolute unconditional right at any and all reasonable times, after not less than twenty-four (24) hours notice to the Tenant (except in the case of an emergency where no such notice is required), to enter the Premises or the Property for any of the following purposes: (a) to inspect the Premises and the Property; (b) to make such repairs and/or changes in the Premises or the Property as the City may deem necessary or proper; (c) to access any City owned or maintained utility; (d) to enforce and carry out any provision of this Lease; (e) to perform any snow removal or related operations on the Property and any adjacent roadways; (f) for any purpose relating to the safety, protection or preservation of the Premises or the Property; or (g) for any other purpose related to the enforcement of this Lease.

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

c. Any regulated utility company and its employees, representatives, agents, and servants, including any contractor employed by such company, shall have the absolute unconditional right at any and all reasonable times, after not less than twenty-four (24) hours notice to the Tenant (except in the case of an emergency where no such notice is required), to enter the Premises or the Property to access any company owned or maintained utility.

d. The Tenant, in coordination with the Other Tenants as specified in Paragraph 3, shall provide for regular access to the Property, and the Premises as applicable, for both private and City-contracted trash and recycling services.

e. The Tenant, in coordination with the Other Tenants as specified in Paragraph 3, shall provide for access through the Property, and the Premises as applicable, on an as-requested basis for private property owners abutting to or adjacent to the Property as relates to larger delivery vehicles, moving vehicles, or construction vehicles.

21. Reservation of Governmental Authority.

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

22. Defaults or Breach.

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

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

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

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

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

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

6. Failure by the Tenant to make any payment of rent, mortgage, loan, or other payments required to be made by the Tenant in order to retain ownership, tenancy, or custody and control of the primary business premises.

7. Being delinquent on any other City obligation, tax, payment, or other liability, including any other leases or agreements with the City.

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

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

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

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

d. The City, in its sole discretion, may afford the Tenant a reasonable time to cure any default or breach of this Lease before declaring a Default or Breach and terminating this Lease.

23. Termination for Convenience.

Either party may terminate this Lease for convenience, for any reason, and at any time by providing sixty (60) calendar days prior written notice to the other party. Any such termination of this Lease shall not discharge the Tenant from any obligation it may have to the City by reason of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events or basis of which shall occur or arise) prior to such termination, whether the same be known or unknown at the time of such termination. The City shall prorate the Rent, and any Additional Rent, as of the date of termination for convenience.

24. Surrender of Premises.

a. On the last day or earlier termination of this Lease, the Tenant shall vacate the Premises and leave it in good condition and repair, normal wear and tear excepted. If the Premises are not surrendered when required, the Tenant shall indemnify, defend and hold the Indemnified Parties harmless against loss or liability resulting from the delay by the Tenant in vacating the Premises, including, without limitation, any claims made by any succeeding tenant or other occupant founded on such delay. Any holding over with the consent of the City after the

termination of this Lease shall be construed to be a tenancy from month-to-month upon the same terms and conditions as provided in this Lease, to the extent applicable.

b. On the last day or earlier termination of this Lease, and in accordance with Paragraph 7 of this Lease, the Tenant shall, within thirty (30) calendar days and at its own cost and expense, dismantle and remove all of its personal property from the Premises. Any such property not removed at the expiration of this Lease in accordance with the preceding sentence and the Tenant's continued failure to remove the same within thirty (30) calendar days after receipt of notice from the City, shall be deemed abandoned and, at the election of the City, shall become the property of the City without payment of any kind to the Tenant, without increasing the City's liability to the Tenant, and for any disposition of it as the City decides to make.

c. Within ten (10) calendar days of vacating, the City shall tour the Premises, with the Tenant present if possible, to determine the condition of the Premises. Any items determined to be in need of correction or repair shall be corrected or repaired by the City, and shall be invoiced by the City and paid by the Tenant within thirty (30) calendar days of such invoicing.

25. Damage to Premises.

In case of any substantial loss of or damage to the Premises as the result of a taking under the power of eminent domain, or by fire, storm or other casualty or force majeure event, the City in its sole and absolute discretion may determine whether or not, and to what extent, to repair or restore any of the Premises, or to terminate this Lease pursuant to Paragraph 23. If the City decides to repair or restore, and any portion of the Premises remains suitable for the Tenant's use, then the Tenant shall be entitled to utilize that portion of the Premises. The City, as applicable and appropriate, shall prorate any Rent due by the Tenant to account for any decreased size of the Premises. If the City either decides not to repair and restore the Premises, and/or repairs and restores the Premises, but no portion of the Premises remains suitable for the Tenant's use, then this Lease shall be terminated pursuant to Paragraph 23. It shall be the sole responsibility of the Tenant to restore, repair and/or remove its own personal property, fixtures and equipment.

26. Modification.

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

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

27. Representations and Warranties.

The Tenant represents and warrants to the City that:

a. The Tenant is a limited liability company organized under the laws of the State of Maryland, and is thus qualified to do business in and is in good standing with the State of Maryland, and is duly authorized according to its governing documents to conduct the business in which it is engaged and as described in this Lease.

- b. The Tenant is authorized to execute, deliver and perform this Lease.
- c. The Tenant shall not violate the order of any court or governmental authority or breach any contract or other agreement by entering into this Lease.
- d. There are no actions, suits, etc. pending or, to the best of its knowledge, threatened against the Tenant or which might adversely affect the Tenant's right to enter into or perform under this Lease.
- e. The Tenant has been represented (or has had the opportunity to be represented) in the execution of this Lease by independent legal counsel.
- f. There exists no actual or potential conflict of interest between its performance under this Lease and its engagement or involvement in any other agreement, or personal or professional activities. In the event such conflict or potential conflict arises during the Term of this Lease, or any renewal thereof, the Tenant shall immediately advise the City in writing thereof.
- g. The representations set forth in the Lease shall be true and valid throughout the Term.

28. Access to Records.

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

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

29. Remedies Cumulative and Concurrent.

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

30. Waiver of Remedies for Breach or Default.

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

later time or times.

31. Independent Contractor Status.

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

32. Binding Effect.

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

33. Governing Law.

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

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

34. Recitals.

The Recitals of this Lease are incorporated into this Lease.

35. Severability.

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

36. Survival.

Those paragraphs in this Lease which by their nature are intended to survive shall survive the termination of this Lease.

37. Time is of the Essence.

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

38. Authorization.

This Lease is authorized by the City Council pursuant to Ordinance O-30-21.

39. Counterparts.

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

40. Notice.

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

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

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

To the Tenant: Iron Rooster-Annapolis, LLC
12 Market Space
Annapolis, Maryland 21401
Attn: Carl Werner, carlwerner09@yahoo.com

40. Guaranty for Other Tenants.

If any of the Other Tenants default, abandon, or otherwise stop using their leased portion(s) of the Property during the Original Term or any Renewal Term (each a "Defaulted Lease"), then the Tenant shall coordinate with the remaining Other Tenants to have either the Tenant or one of the remaining Other Tenants assume the Defaulted Lease, with the Defaulted Lease cost paid by the assuming party. Such assumption of a Defaulted Lease shall be documented through a written amendment to the assuming party's lease for the Property.

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

WITNESS:

IRON ROOSTER-ANNAPOLIS, LLC

By: _____
Name: Carl Werner (Seal)
Title:

ATTEST:

CITY OF ANNAPOLIS

Regina C. Watkins-Eldridge, MMC,
City Clerk

By: _____
Gavin Buckley, Mayor (Seal)

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

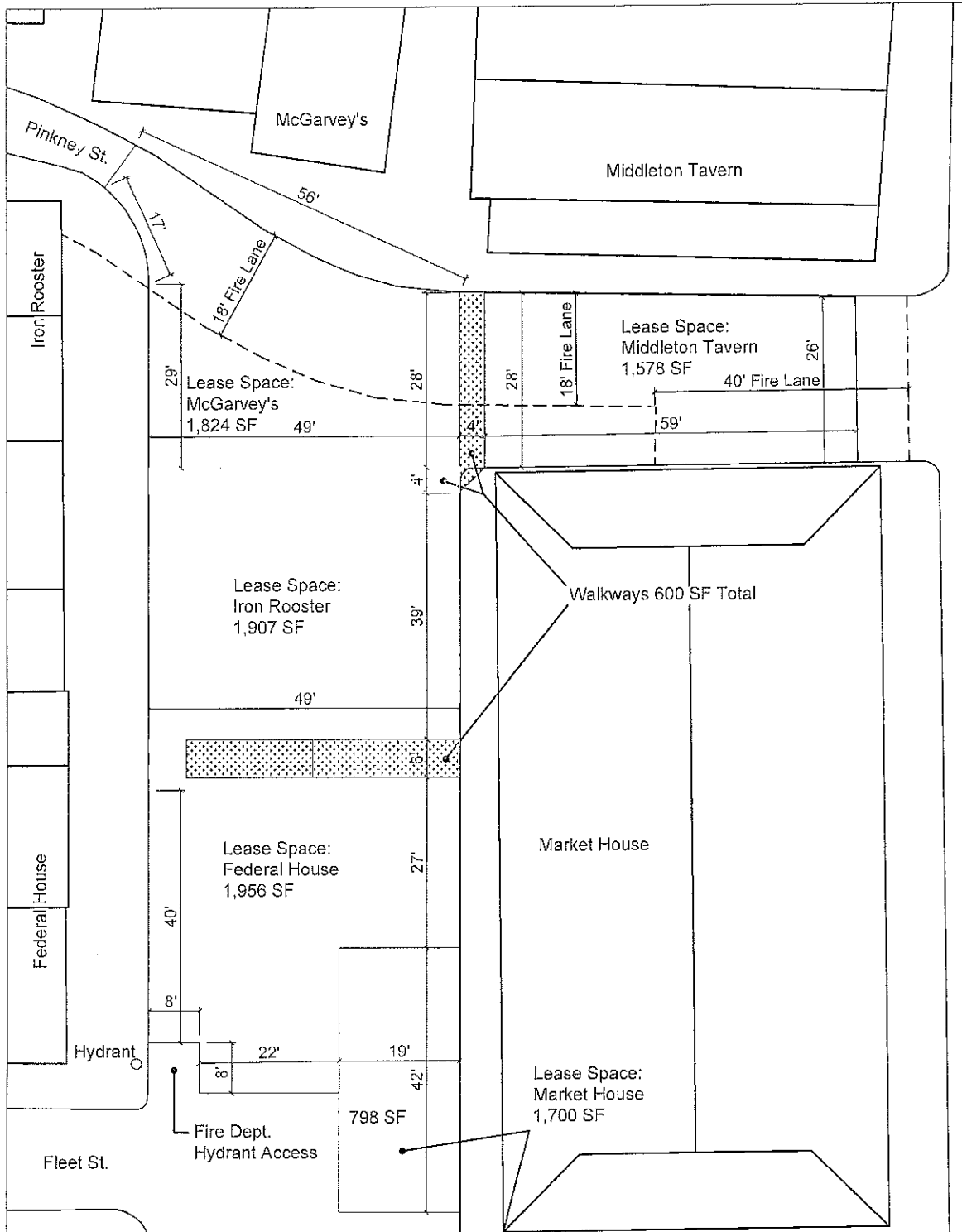
Office of Law
D. Michael Lyles, City Attorney

**ATTACHMENT A
DEED**

See attached pages.

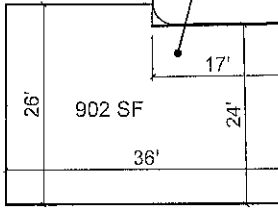
**ATTACHMENT B
PREMISES**

See attached page.



TABULATION OF SQUARE FOOT AREAS

	Subtotal
MIDDLETON TAVERN	1,578
APPORTIONED WALKWAY AREA-RED	120
MCGARVEYS	1,824
APPORTIONED WALKWAY AREA-YELLOW	120
IRON ROOSTER	1,907
APPORTIONED WALKWAY AREA-GREEN	120
FEDERAL HOUSE	1,956
APPORTIONED WALKWAY AREA-BLUE	120
MARKET HOUSE	1,700
APPORTIONED WALKWAY AREA-PURPLE	120
TOTAL	9,565



**ATTACHMENT C
PURPOSE**

The following Tenant business-related uses are permitted under the terms of the Lease, and considered as part of the Purpose as defined in Paragraph 2(a) of the Lease:

- 1) Outdoor dining;
- 2) Tenant business-related special events;
- 3) Festivals;
- 4) Markets;
- 5) Event watch parties;
- 6) Movie nights;
- 7) Live music;
- 8) Recreational events;
- 9) Vendor booths;
- 10) Charity events; and
- 11) Tented events for inclement/cold weather.

These uses are subject to the terms and conditions of the Lease, as well as all applicable laws, regulations, and other statutory permitted governmental oversight. For uses numbered 2 through 10, the Tenant shall complete and submit a City Special Events Application and Agreement to the City Development and Events Specialist at least thirty (30) calendar days in advance of any such use, not for approval, but for informational purposes only to allow for coordination of City resources, traffic control, and emergency management as applicable. The Tenant shall not be required to pay any Application Fees, but may be required to pay Location Fees and/or Service Fees, as defined in that Application, as applicable to each use.



Chartered 1708

City of Annapolis
160 Duke of Gloucester Street
Annapolis, MD 21401

**LEASE AGREEMENT
BETWEEN THE CITY OF ANNAPOLIS AND
McGARVEY'S ANNAPOLIS, LLC
FOR MARKET SPACE**

THIS LEASE AGREEMENT ("Lease") is made this _____ day of _____ 2021, by and between the City of Annapolis, a municipal corporation of the State of Maryland (the "City"), and McGARVEY'S ANNAPOLIS, LLC, a Maryland limited liability company (the "Tenant").

WHEREAS, the City is the fee simple owner of a parcel of land consisting of nineteen (19) marked parking spaces and related roadways, located at Market Space, Annapolis, Maryland 21401 (collectively, the "Property"), and as more particularly described in a deed dated July 28, 1784, and attached hereto and incorporated herein as Attachment A; and

WHEREAS, the Tenant operates a business located adjacent to the Property; and

WHEREAS, the Tenant wishes to lease a portion of the Property, including one hundred twenty (120) square feet of exclusive walkway area, together with a right to use, in common with others, adjoining sidewalks abutting the Property, all as further depicted in Attachment B (the "Premises") attached hereto and incorporated herein, but excluding parking meters, bollards and chains, and parking and traffic control signage; and

WHEREAS, the Tenant wishes to lease the Premises for the purpose of extending its indoor restaurant seating as outdoor dining, and related special event, festival, and market activities, in connection with its business as further described herein; and

WHEREAS, Bembe Beach, LLC, Iron Rooster-Annapolis, LLC, New Market House LLC, and Middleton's Tavern, Ltd. (collectively, the "Other Tenants") wish to lease the remaining portions of the Property for similar purposes, as depicted in Attachment B, and in accordance with separate lease agreements with the City; and

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

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

1. Term; Tenant Termination with Start of the City Dock Project.

a. The City leases to the Tenant and the Tenant hereby leases from the City Premises for a Term commencing on the Effective Date, as defined herein November 1, 2021, and

terminating on June 30, 2022 (the "Original Term"), unless terminated earlier in accordance with the terms of this Lease. ~~For purposes of this Lease, the "Effective Date" shall be that date falling thirty (30) calendars after the expiration or termination of the State of Maryland State of Emergency related to the COVID-19 Pandemic.~~

b. Provided that the Tenant is not otherwise in default hereunder and continues to occupy the Premises, and subject to the City's termination rights herein, the Tenant shall have the option to renew this Lease for successive terms of one (1) year upon the same terms and conditions herein except as may otherwise be provided for in a written amendment to this Lease (each a "Renewal Term" and collectively the "Renewal Terms"); provided that regardless of any Term or Renewal Term currently in effect, the Lease shall expire on the Start of the City Dock Project, as defined herein. Each Renewal Term shall commence and run with the City fiscal year (July 1st – June 30th). If the Tenant elects to exercise its option, it shall give the City at least sixty (60) calendar days written notice before the expiration of the Term, or any Renewal Term thereof.

c. For purposes of this Lease, "Start of the City Dock Project" shall be that date on which construction of the revitalization work at Market Space begins. The City shall provide the Tenant prior notice of the estimated Start of the City Dock Project date at least sixty (60) calendar days prior to the estimated date and the exact Start of the City Dock Project date as soon as reasonably established by the City. Within thirty (30) calendar days of such notice, the Tenant may terminate this Lease for convenience by providing written notice to the City that specifies a termination date prior to the Start of the City Dock Project date. Any such termination of this Lease by the Tenant shall not discharge the Tenant from any obligation it may have to the City by reason of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events or basis of which shall occur or arise) prior to such termination, whether the same be known or unknown at the time of such termination. The City shall prorate the Rent, and any Additional Rent, as of the date of termination for convenience.

2. Use of Premises.

a. The Tenant may use and occupy the Premises during the Term and any Renewal Term of this Lease only for the purpose of outdoor dining, and related special event, festival, market, and similar activities, in connection with its business (the "Purpose"), as further described in Attachment C attached hereto and incorporated herein, and for no other purpose whatsoever. The space on the Property leased to the Other Tenants is expressly and specifically excluded from this Lease, and the Other Tenants shall not be considered parties to or third party beneficiaries of this Lease.

b. The Tenant accepts the Premises in "as is" condition. The City makes no representation or warranty with respect to the condition or state of the land, the Property, or the Premises, or its fitness for any particular use, and the City shall not be liable for any latent or patent defect thereon. Unless as otherwise expressly provided in this Lease, the City does not make, and specifically disclaims, any representations, warranties or covenants of any kind or character, express or implied, with respect to the nature, condition, economical, functional, environmental or physical condition of the Premises. The Tenant represents and warrants to the City that: (1) the Tenant is knowledgeable in matters of real estate or had an opportunity to consult with a real estate professional; (2) the Tenant is relying solely on the Tenant's own expertise and/or the expertise of the Tenant's consultants with respect to the Premises; (3) the Tenant shall

assume all risk that adverse matters, including, but not limited to, adverse physical and environmental conditions, may not have been revealed through the Tenant's, or the Tenant's consultants', inspections, tests, studies, and investigations of the Premises.

c. The Tenant shall not use or occupy or permit the Premises, or any part thereof including, but not limited to, the Property, to be used or occupied, nor do or permit anything to be done in or on the Premises in a manner which would in any way (1) violate any of the terms of this Lease; (2) make it difficult for either the City or the Tenant to obtain fire or other insurance required by this Lease at standard rates; (3) cause or create a public or private nuisance in or on the Premises or the Property; (4) tend to impair or interfere with the character, reputation or appearance of the Premises or the Property; or (5) impede or interfere with the provision of any governmental services to the Property and neighboring residents and businesses, including but not limited, to fire and emergency services, utilities, police and public works.

d. The Tenant shall comply with all requirements of the City Fire Marshal's Office in its use of the Premises and the Property. The Tenant shall insure that no personal property, structures, or other materials remain in the fire lane (the "Fire Lane"), as depicted on Attachment B, at any time when the Tenant's business operations are closed or otherwise have no available staff to remove personal property from the Fire Lane.

e. The Tenant shall comply with all requirements of the Americans with Disabilities Act (ADA) in its use of the Premises, the Property, and any abutting public walkways including, but limited to any sidewalks, and any private property entrances and exits.

f. Music or other amplified sound on the Premises shall not exceed the maximum decibel levels or the time restrictions specified in Chapter 11.12 of the Code of the City of Annapolis, as may be amended.

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

h. The Tenant may install or otherwise place non-permanent decorative, architectural, or vegetative elements to the Premises (collectively, the "Decorations"), and may also place its own tables, chairs, benches, tents, lighting fixtures, and similar items (collectively, the "Furnishings") on the Premises for use as outdoor dining during the regular business hours of the Tenant's business establishment. The Tenant shall use good faith efforts to purchase and install all of the new Decorations and the new Furnishings on the Premises no later than March 1, 2022, which shall replace the Decorations and Furnishings currently existing as of the date of this Lease. All such Decorations and Furnishings shall be approved by the City's Chief of Historic Preservation prior to use on-site. The design of all such Decorations and Furnishings, and their layout within the leased area, shall be developed in coordination with and under the advisement of the City Dock Action Committee (CDAC) Design Subcommittee, and will require an HPC Certificate of Approval (COA). The COA may be issued based on new guidelines developed for outside dining areas in addition to current guidelines for sidewalk cafes. The Tenant shall keep the Premises, any Decorations, and any Furnishings free of trash and debris, and in a clean, safe, orderly and functioning (or properly stored) manner at all times.

i. Regardless of any established business hours, the Tenant shall not use the Premises for any purpose, besides storage of the Decorations and tables, chairs, benches, tents, and similar items, between the hours of 11:00 PM and 7:00 AM.

3. Tenant's Responsibilities for Management of the Premises and the Property.

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

- a. Oversight of all operations at the Premises;
- b. Quality assurance for all aspects of the Premises' areas;
- c. Development and assurance of proper security procedures for the Premises; and
- d. Coordination with all of the Other Tenants for the following:
 - (1) Deliveries to any properties abutting or adjacent to the Property;
 - (2) City access pursuant to Paragraph 20(a);
 - (3) Access by any regulated utility company pursuant to Paragraph 20(c);
 - (4) Access for private and City-contracted trash, recycling and yard waste collection services pursuant to Paragraph 20(d);
 - (5) Access through the Property by certain private property owners pursuant to Paragraph 20(e); and
 - (6) Maintenance of barriers around the Property as required and approved by the City, including any needed coordination for moving/removal of such barriers to provide any access to the Property required by this Lease.

4. Rent; Security Deposit.

a. As annual rent for the Premises, the Tenant shall pay unto the City Thirty-One Thousand Seven Hundred Thirteen Dollars and Twenty-One Cents (\$31,713.21) payable in twelve (12) equal monthly payments of Two Thousand Six Hundred Forty-Two Dollars and Seventy-Seven Cents (\$2,642.77) (collectively, the "Rent"). Each payment shall be made promptly when due, in advance, on the first day of each month during the Original Term and any Renewal Term, without deduction, setoff or counterclaim whatsoever, and without demand. The City shall prorate the Rent, and any Additional Rent, if the Effective Date occurs later than July 1, 2021. All payments shall be made payable to the "City of Annapolis" and shall be sent or delivered to the Finance Director, Finance Department, City Hall, 160 Duke of Gloucester Street, Annapolis, Maryland 21401. Rent is based, in part, on a total charge of \$22.50 per parking spot per day for all five tenants (i.e. the Tenant and the Other Tenants), to be included as part of the Premises and/or the leased premises of the Other Tenants. The Rent shall escalate at a rate of two percent (2.0%) on July 1, 2022 and on each July 1st thereafter.

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

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

d. In the event the Rent or Additional Rent under this Lease, or any part thereof, shall remain unpaid for a period of fifteen (15) business days after the day on which it is due, then in addition to all other sums due by the Tenant under this Lease, the Tenant shall pay the City as Additional Rent: (1) late fees equal to five percent (5%) of the unpaid amount, and (2) if an action of any type is filed in any court, reasonable attorney's fees.

e. No later than the Effective Date, the Tenant shall deposit with the City's Finance Director, 160 Duke of Gloucester Street, Annapolis MD, 21401, the amount of Five Thousand Dollars and No Cents (\$5,000.00) (the "Security Deposit"). The City shall have no obligation to pay any interest on the Security Deposit, and may commingle it in an account with other funds. The City, at its option, may apply any part of the Security Deposit towards the payment of outstanding amounts due under this Lease, provided always that the Tenant's liability under this Lease shall not thereby be discharged. Upon any uncured monetary default, the City may request, and the Tenant shall be obligated to deposit, additional security to secure the Tenant's performance under this Lease within ten (10) business days to restore the Security Deposit to its original amount. If not used, the Security Deposit shall be returned to the Tenant within thirty (30) calendar days after the Tenant vacates the Premises in accordance with Paragraph 24.

5. Quiet Enjoyment.

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

6. Utilities/Services.

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

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

c. The Tenant, at its sole cost and expense, shall arrange and pay for any janitorial services that are necessary for the operation and upkeep of the Premises.

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

e. The Tenant, at its sole cost and expense, shall arrange and pay for the removal of all snow and ice from the driveways, roadways, stairs, walkways, sidewalks, parking areas and other rights-of-way located on the Premises.

7. Tenant Equipment, Furnishings, Personal Property.

The Tenant shall retain ownership of all of its trade and business equipment, furnishings and personal property from time to time installed on the Premises. No fixtures, equipment or furnishings may be attached or affixed to the exterior of the surrounding buildings. The Tenant may remove any such fixtures, equipment or furnishings at any such time during the Term and shall remove all of it prior to the expiration of the Lease. Removal shall not cause any damage to the Premises or the Property. The Tenant shall pay for any damages it may cause, which shall be due and payable by the Tenant within thirty (30) calendar days of City invoicing. Any such personal property not removed at the expiration of the Term shall be handled in accordance with Paragraph 24 of this Lease.

8. Repairs and Maintenance.

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

b. The Tenant shall not make or cause to be made any permanent alterations, additions, or improvements to the Premises without obtaining the prior written consent of the City which will be granted in the City's sole and absolute discretion.

c. Prior to the Tenant repairing, replacing or otherwise altering any aspect of the Premises or the Property, the Tenant shall provide the City with thirty (30) calendar day prior written notice specifying the need for and nature of any and all such repairs, replacements or alternations, and providing the City with a copy of all applicable contracts or agreements with any third party hired by the Tenant to perform such repairs, replacements or alterations. The Tenant or its contractors shall not start or undertake any such repairs, replacements or alterations without the prior written approval of the City, and without first obtaining all necessary permits and governmental approvals. Such repairs, replacements or alterations shall be made and rendered by professional contractors licensed in the State of Maryland, be done in a good and workmanlike manner, and shall comply in all respects with all applicable federal, state, local and City laws, ordinances and regulations, including, but not limited to, zoning, building and fire code requirements. The Tenant agrees that all such improvements shall become the property of the City when made, and further, that the Tenant shall be entitled to no reimbursement or re-payment for any such improvements.

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

9. Signs.

The Tenant shall not to place or maintain any sign, billboard, marquee, awning, decoration, placard, lettering, advertising matter or other thing of any kind, whether permanent or temporary, on the Premises without first obtaining the City's written consent a sign permit per Planning and Zoning code section 21.070.30 and 21.070.090 which requires approval from the Historic Preservation Commission using the HPC Design Guidelines for signs. Approval is handled by the Chief of Preservation using current Administrative Approval Guidelines. The Tenant shall maintain any sign, billboard, marquee, awning, decoration, placard, lettering or advertising matter or other thing of any kind, as may be approved by the City, and shall repair and replace when necessary to keep in good condition and repair at all times.

10. Driveways, Footways and Parking Areas.

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

11. Non-Discrimination.

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

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

12. No Assignment or Sublease.

The Tenant shall not assign its rights to this Lease to any third parties nor shall it enter into any subleases with other parties, nor shall Tenant permit other persons or parties to occupy the Premises, nor shall it grant any license or concessions to third parties for other uses of the Premises without the prior written consent of the City.

13. Security, Property Loss Damage.

a. The Tenant assumes all risks associated with the security of the Premises. The City shall have no obligation or duty with regard to security. The Tenant shall police, light and maintain the Premises in a clean, safe and secure manner.

b. The Tenant shall not under any circumstances issue any no trespass notices, whether oral or written, or exclude any individual from the Premises or the Property for any reason, except to prevent a crime from being committed on the Premises or the Property. If the Tenant desires to issue any no trespass notices or exclude any individual from the Premises and/or the

Property, the Tenant shall send a written request to the City and the City shall make the ultimate decision how and if to act on this request.

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

14. Compliance with Laws.

a. The Tenant, at its sole cost and expense, shall keep in force all licenses, consents and permits necessary for the lawful use of the Premises for the purposes of this Lease. The Tenant, at its sole cost and expense, shall promptly comply with and do all things required by any notice served upon it or upon the City in relation to the Premises or any part thereof, from any of the departments or agencies of the City, a county, the State of Maryland, or the United States, if the same shall be caused by the Tenant's use of the Premises. The Tenant shall pay all costs, expenses, claims, fines, penalties, and damages that may in any manner arise out of the failure of the Tenant to comply. Failure to comply with this Paragraph shall constitute a breach of this Lease, and the City may terminate this Lease for default in accordance with Paragraph 22.

b. The Tenant shall have a reasonable time not to exceed ten (10) calendar days to comply with any notice pursuant to Paragraph 14(a), unless such violation relates to public safety, in which case the City may order a temporary suspension of the Tenant's business and other operations pending compliance.

15. Insurance.

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

1. Commercial General Liability Insurance Policy, including contractual liability and property liability insurance for the Premises, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of this Lease, but no less than \$1,000,000.00 per person and \$2,000,000.00 per occurrence in the aggregate, using a Combined Single Limit for bodily injury and property damage.

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

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

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

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

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

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

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

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

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

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

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

16. Indemnification.

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

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

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

d. The City, in its sole discretion, may participate in handling its own defense or exclusively handle its own defense, and select its own attorneys, including the City Attorney. The indemnification for reasonable attorney fees applies whether or not the City Attorney or other attorney handles the defense.

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

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

17. Impairment of the City's Title.

The Tenant shall not have the right, power, or permission to do any act or to make any agreement that may create, give rise to, or be the foundation for, any right, title, interest, lien, charge, or other encumbrance on the estate of the City in the Premises or the Property. The Tenant shall not permit any part of the Premises or the Property to be used by any person or persons or by the public at any time or times during the Term of this Lease, in such manner as might tend to impair the City's title to or interest in the Premises or the Property, or in such manner

as might make possible a claim or claims of adverse use, adverse possession, prescription, dedication, or other similar claims of, in, to, or with respect to the Premises or the Property.

18. Liens and Encumbrances.

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

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

19. Taxes and Assessments.

a. The Tenant shall pay all impositions including all state, county and City taxes (including real estate ad valorem, sales, use, and occupancy taxes), and assessments of any kind and nature whatsoever, including all interest and penalties on them, which shall or may accrue or be incurred during the Term of this Lease. The Tenant shall pay all such taxes and assessments before any fine, penalty, interest, or cost may be added for nonpayment, and shall furnish to the City, on request, official receipts or other satisfactory proof evidencing such payment. If any tax or assessment is payable in installments over a period of years, the Tenant shall be liable only for payment of those installments falling due and payable during the Term, with appropriate pro-ration in case of fractional years.

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

20. Right of Entry.

a. The City and its employees, representatives, agents, and servants, including any builder or contractor employed by the City, shall have the absolute unconditional right at any and all reasonable times, after not less than twenty-four (24) hours notice to the Tenant (except in the case of an emergency where no such notice is required), to enter the Premises or the Property for any of the following purposes: (a) to inspect the Premises and the Property; (b) to make such repairs and/or changes in the Premises or the Property as the City may deem necessary or proper; (c) to access any City owned or maintained utility; (d) to enforce and carry out any provision of this Lease; (e) to perform any snow removal or related operations on the Property and any adjacent roadways; (f) for any purpose relating to the safety, protection or preservation of the Premises or the Property; or (g) for any other purpose related to the enforcement of this Lease.

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

c. Any regulated utility company and its employees, representatives, agents, and servants, including any contractor employed by such company, shall have the absolute unconditional right at any and all reasonable times, after not less than twenty-four (24) hours notice to the Tenant (except in the case of an emergency where no such notice is required), to enter the Premises or the Property to access any company owned or maintained utility.

d. The Tenant, in coordination with the Other Tenants as specified in Paragraph 3, shall provide for regular access to the Property, and the Premises as applicable, for both private and City-contracted trash and recycling services.

e. The Tenant, in coordination with the Other Tenants as specified in Paragraph 3, shall provide for access through the Property, and the Premises as applicable, on an as-requested basis for private property owners abutting to or adjacent to the Property as relates to larger delivery vehicles, moving vehicles, or construction vehicles.

21. Reservation of Governmental Authority.

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

22. Defaults or Breach.

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

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

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

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

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

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

6. Failure by the Tenant to make any payment of rent, mortgage, loan, or other payments required to be made by the Tenant in order to retain ownership, tenancy, or custody and control of the primary business premises.

7. Being delinquent on any other City obligation, tax, payment, or other liability, including any other leases or agreements with the City.

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

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

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

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

d. The City, in its sole discretion, may afford the Tenant a reasonable time to cure any default or breach of this Lease before declaring a Default or Breach and terminating this Lease.

23. Termination for Convenience.

Either party may terminate this Lease for convenience, for any reason, and at any time by providing sixty (60) calendar days prior written notice to the other party. Any such termination of this Lease shall not discharge the Tenant from any obligation it may have to the City by reason of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events or basis of which shall occur or arise) prior to such termination, whether the same be known or unknown at the time of such termination. The City shall prorate the Rent, and any Additional Rent, as of the date of termination for convenience.

24. Surrender of Premises.

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

b. On the last day or earlier termination of this Lease, and in accordance with Paragraph 7 of this Lease, the Tenant shall, within thirty (30) calendar days and at its own cost and expense, dismantle and remove all of its personal property from the Premises. Any such property not removed at the expiration of this Lease in accordance with the preceding sentence and the Tenant's continued failure to remove the same within thirty (30) calendar days after receipt of notice from the City, shall be deemed abandoned and, at the election of the City, shall become the property of the City without payment of any kind to the Tenant, without increasing the City's liability to the Tenant, and for any disposition of it as the City decides to make.

c. Within ten (10) calendar days of vacating, the City shall tour the Premises, with the Tenant present if possible, to determine the condition of the Premises. Any items determined to be in need of correction or repair shall be corrected or repaired by the City, and shall be invoiced by the City and paid by the Tenant within thirty (30) calendar days of such invoicing.

25. Damage to Premises.

In case of any substantial loss of or damage to the Premises as the result of a taking under the power of eminent domain, or by fire, storm or other casualty or force majeure event, the City in its sole and absolute discretion may determine whether or not, and to what extent, to repair or restore any of the Premises, or to terminate this Lease pursuant to Paragraph 23. If the City decides to repair or restore, and any portion of the Premises remains suitable for the Tenant's use, then the Tenant shall be entitled to utilize that portion of the Premises. The City, as applicable and appropriate, shall prorate any Rent due by the Tenant to account for any decreased size of the Premises. If the City either decides not to repair and restore the Premises, and/or repairs and restores the Premises, but no portion of the Premises remains suitable for the Tenant's use, then this Lease shall be terminated pursuant to Paragraph 23. It shall be the sole responsibility of the Tenant to restore, repair and/or remove its own personal property, fixtures and equipment.

26. Modification.

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

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

27. Representations and Warranties.

The Tenant represents and warrants to the City that:

- a. The Tenant is a limited liability company organized under the laws of the State of Maryland, and is thus qualified to do business in and is in good standing with the State of Maryland, and is duly authorized according to its governing documents to conduct the business in which it is engaged and as described in this Lease.
- b. The Tenant is authorized to execute, deliver and perform this Lease.
- c. The Tenant shall not violate the order of any court or governmental authority or breach any contract or other agreement by entering into this Lease.
- d. There are no actions, suits, etc. pending or, to the best of its knowledge, threatened against the Tenant or which might adversely affect the Tenant's right to enter into or perform under this Lease.
- e. The Tenant has been represented (or has had the opportunity to be represented) in the execution of this Lease by independent legal counsel.
- f. There exists no actual or potential conflict of interest between its performance under this Lease and its engagement or involvement in any other agreement, or personal or professional activities. In the event such conflict or potential conflict arises during the Term of this Lease, or any renewal thereof, the Tenant shall immediately advise the City in writing thereof.
- g. The representations set forth in the Lease shall be true and valid throughout the Term.

28. Access to Records.

- a. At any time during normal business hours with reasonable prior notice from the City, and as often as the City may deem necessary, the Tenant shall make available to and allow inspection and copying by the City, its employees or agents, of all books, records, accounts, reports, information and documentation of the Tenant related to the subject matter of this Lease, including, but not limited to, all contracts, invoices, payroll, and financial audits.
- b. The Tenant shall maintain all books, records, accounts, reports, information and documentation required under this Lease for a period of at least three (3) years after the date of termination of this Lease including any renewals, except in the event of litigation or settlement of claims arising from the performance of this Lease, in which case the Tenant shall do so until three (3) years after final adjudication of such litigation or settlement of claims.

29. Remedies Cumulative and Concurrent.

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

30. Waiver of Remedies for Breach or Default.

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

31. Independent Contractor Status.

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

32. Binding Effect.

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

33. Governing Law.

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

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

34. Recitals.

The Recitals of this Lease are incorporated into this Lease.

35. Severability.

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

36. Survival.

Those paragraphs in this Lease which by their nature are intended to survive shall survive the termination of this Lease.

37. Time is of the Essence.

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

38. Authorization.

This Lease is authorized by the City Council pursuant to Ordinance O-30-21.

39. Counterparts.

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

40. Notice.

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

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

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

To the Tenant: McGarvey's Annapolis, LLC
 8 Market Space
 Annapolis, Maryland 21401
 Attn: Kevin Havens, khavens@mcgarveysannapolis.com

40. Guaranty for Other Tenants.

If any of the Other Tenants default, abandon, or otherwise stop using their leased portion(s) of the Property during the Original Term or any Renewal Term (each a "Defaulted Lease"), then the Tenant shall coordinate with the remaining Other Tenants to have either the Tenant or one of the remaining Other Tenants assume the Defaulted Lease, with the Defaulted Lease cost paid by the assuming party. Such assumption of a Defaulted Lease shall be documented through a written amendment to the assuming party's lease for the Property.

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

WITNESS:

McGARVEY'S ANNAPOLIS, LLC

By: _____
Name: Kevin Havens (Seal)
Title:

ATTEST:

CITY OF ANNAPOLIS

Regina C. Watkins-Eldridge, MMC,
City Clerk

By: _____ (Seal)
Gavin Buckley, Mayor

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

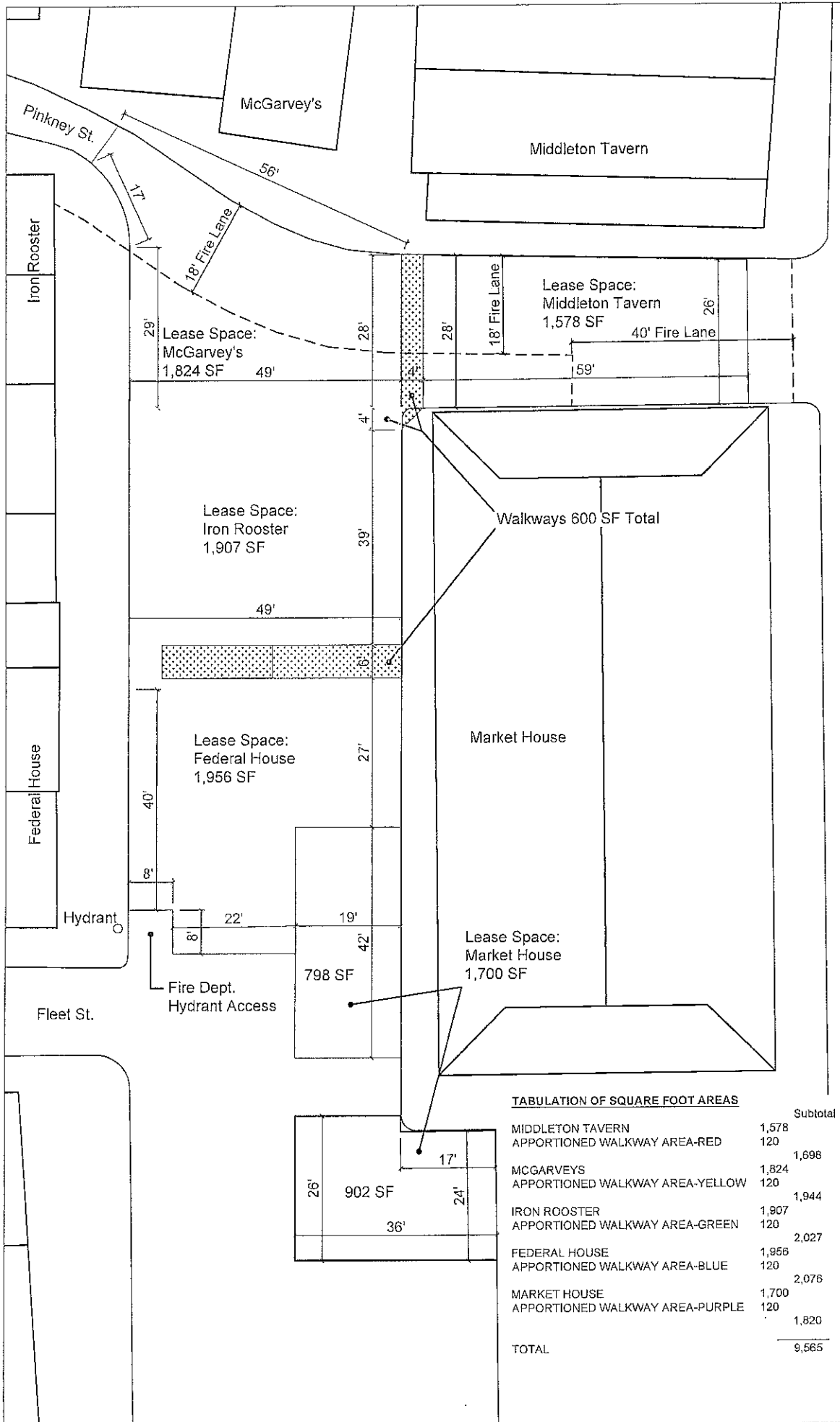
Office of Law
D. Michael Lyles, City Attorney

**ATTACHMENT A
DEED**

See attached pages.

**ATTACHMENT B
PREMISES**

See attached page.



TABULATION OF SQUARE FOOT AREAS

	Subtotal
MIDDLETON TAVERN	1,578
APPORTIONED WALKWAY AREA-RED	120
	1,698
MCGARVEYS	1,824
APPORTIONED WALKWAY AREA-YELLOW	120
	1,944
IRON ROOSTER	1,907
APPORTIONED WALKWAY AREA-GREEN	120
	2,027
FEDERAL HOUSE	1,956
APPORTIONED WALKWAY AREA-BLUE	120
	2,076
MARKET HOUSE	1,700
APPORTIONED WALKWAY AREA-PURPLE	120
	1,820
TOTAL	9,565

**ATTACHMENT C
PURPOSE**

The following Tenant business-related uses are permitted under the terms of the Lease, and considered as part of the Purpose as defined in Paragraph 2(a) of the Lease:

- 1) Outdoor dining;
- 2) Tenant business-related special events;
- 3) Festivals;
- 4) Markets;
- 5) Event watch parties;
- 6) Movie nights;
- 7) Live music;
- 8) Recreational events;
- 9) Vendor booths;
- 10) Charity events; and
- 11) Tented events for inclement/cold weather.

These uses are subject to the terms and conditions of the Lease, as well as all applicable laws, regulations, and other statutory permitted governmental oversight. For uses numbered 2 through 10, the Tenant shall complete and submit a City Special Events Application and Agreement to the City Development and Events Specialist at least thirty (30) calendar days in advance of any such use, not for approval, but for informational purposes only to allow for coordination of City resources, traffic control, and emergency management as applicable. The Tenant shall not be required to pay any Application Fees, but may be required to pay Location Fees and/or Service Fees, as defined in that Application, as applicable to each use.



Chartered 1708

City of Annapolis
160 Duke of Gloucester Street
Annapolis, MD 21401

**LEASE AGREEMENT
BETWEEN THE CITY OF ANNAPOLIS AND
MIDDLETON'S TAVERN, LTD.
FOR MARKET SPACE**

THIS LEASE AGREEMENT ("Lease") is made this _____ day of _____, 2021, by and between the City of Annapolis, a municipal corporation of the State of Maryland (the "City"), and MIDDLETON'S TAVERN, LTD., a Maryland corporation (the "Tenant").

WHEREAS, the City is the fee simple owner of a parcel of land consisting of nineteen (19) marked parking spaces and related roadways, located at Market Space, Annapolis, Maryland 21401 (collectively, the "Property"), and as more particularly described in a deed dated July 28, 1784, and attached hereto and incorporated herein as Attachment A; and

WHEREAS, the Tenant operates a business located adjacent to the Property; and

WHEREAS, the Tenant wishes to lease a portion of the Property, including one hundred twenty (120) square feet of exclusive walkway area, together with a right to use, in common with others, adjoining sidewalks abutting the Property, all as further depicted in Attachment B (the "Premises") attached hereto and incorporated herein, but excluding parking meters, bollards and chains, and parking and traffic control signage; and

WHEREAS, the Tenant wishes to lease the Premises for the purpose of extending its indoor restaurant seating as outdoor dining, and related special event, festival, and market activities, in connection with its business as further described herein; and

WHEREAS, McGarvey's Annapolis, LLC, Iron Rooster-Annapolis, LLC, New Market House LLC, and Bembe Beach, LLC (collectively, the "Other Tenants") wish to lease the remaining portions of the Property for similar purposes, as depicted in Attachment B, and in accordance with separate lease agreements with the City; and

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

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

1. Term; Tenant Termination with Start of the City Dock Project.

a. The City leases to the Tenant and the Tenant hereby leases from the City Premises for a Term commencing on the Effective Date, as defined herein November 1, 2021, and

terminating on June 30, 2022 (the "Original Term"), unless terminated earlier in accordance with the terms of this Lease. ~~For purposes of this Lease, the "Effective Date" shall be that date falling thirty (30) calendars after the expiration or termination of the State of Maryland State of Emergency related to the COVID-19 Pandemic.~~

b. Provided that the Tenant is not otherwise in default hereunder and continues to occupy the Premises, and subject to the City's termination rights herein, the Tenant shall have the option to renew this Lease for successive terms of one (1) year upon the same terms and conditions herein except as may otherwise be provided for in a written amendment to this Lease (each a "Renewal Term" and collectively the "Renewal Terms"); provided that regardless of any Term or Renewal Term currently in effect, the Lease shall expire on the Start of the City Dock Project, as defined herein. Each Renewal Term shall commence and run with the City fiscal year (July 1st – June 30th). If the Tenant elects to exercise its option, it shall give the City at least sixty (60) calendar days written notice before the expiration of the Term, or any Renewal Term thereof.

c. For purposes of this Lease, "Start of the City Dock Project" shall be that date on which construction of the revitalization work at Market Space begins. The City shall provide the Tenant prior notice of the estimated Start of the City Dock Project date at least sixty (60) calendar days prior to the estimated date and the exact Start of the City Dock Project date as soon as reasonably established by the City. Within thirty (30) calendar days of such notice, the Tenant may terminate this Lease for convenience by providing written notice to the City that specifies a termination date prior to the Start of the City Dock Project date. Any such termination of this Lease by the Tenant shall not discharge the Tenant from any obligation it may have to the City by reason of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events or basis of which shall occur or arise) prior to such termination, whether the same be known or unknown at the time of such termination. The City shall prorate the Rent, and any Additional Rent, as of the date of termination for convenience.

2. Use of Premises.

a. The Tenant may use and occupy the Premises during the Term and any Renewal Term of this Lease only for the purpose of outdoor dining, and related special event, festival, market, and similar activities, in connection with its business (the "Purpose"), as further described in Attachment C attached hereto and incorporated herein, and for no other purpose whatsoever. The space on the Property leased to the Other Tenants is expressly and specifically excluded from this Lease, and the Other Tenants shall not be considered parties to or third party beneficiaries of this Lease.

b. The Tenant accepts the Premises in "as is" condition. The City makes no representation or warranty with respect to the condition or state of the land, the Property, or the Premises, or its fitness for any particular use, and the City shall not be liable for any latent or patent defect thereon. Unless as otherwise expressly provided in this Lease, the City does not make, and specifically disclaims, any representations, warranties or covenants of any kind or character, express or implied, with respect to the nature, condition, economical, functional, environmental or physical condition of the Premises. The Tenant represents and warrants to the City that: (1) the Tenant is knowledgeable in matters of real estate or had an opportunity to consult with a real estate professional; (2) the Tenant is relying solely on the Tenant's own expertise and/or the expertise of the Tenant's consultants with respect to the Premises; (3) the Tenant shall

assume all risk that adverse matters, including, but not limited to, adverse physical and environmental conditions, may not have been revealed through the Tenant's, or the Tenant's consultants', inspections, tests, studies, and investigations of the Premises.

c. The Tenant shall not use or occupy or permit the Premises, or any part thereof including, but not limited to, the Property, to be used or occupied, nor do or permit anything to be done in or on the Premises in a manner which would in any way (1) violate any of the terms of this Lease; (2) make it difficult for either the City or the Tenant to obtain fire or other insurance required by this Lease at standard rates; (3) cause or create a public or private nuisance in or on the Premises or the Property; (4) tend to impair or interfere with the character, reputation or appearance of the Premises or the Property; or (5) impede or interfere with the provision of any governmental services to the Property and neighboring residents and businesses, including but not limited, to fire and emergency services, utilities, police and public works.

d. The Tenant shall comply with all requirements of the City Fire Marshal's Office in its use of the Premises and the Property. The Tenant shall insure that no personal property, structures, or other materials remain in the fire lane (the "Fire Lane"), as depicted on Attachment B, at any time when the Tenant's business operations are closed or otherwise have no available staff to remove personal property from the Fire Lane.

e. The Tenant shall comply with all requirements of the Americans with Disabilities Act (ADA) in its use of the Premises, the Property, and any abutting public walkways including, but limited to any sidewalks, and any private property entrances and exits.

f. Music or other amplified sound on the Premises shall not exceed the maximum decibel levels or the time restrictions specified in Chapter 11.12 of the Code of the City of Annapolis, as may be amended.

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

h. The Tenant may install or otherwise place non-permanent decorative, architectural, or vegetative elements to the Premises (collectively, the "Decorations"), and may also place its own tables, chairs, benches, tents, lighting fixtures, and similar items (collectively, the "Furnishings") on the Premises for use as outdoor dining during the regular business hours of the Tenant's business establishment. The Tenant shall use good faith efforts to purchase and install all of the new Decorations and the new Furnishings on the Premises no later than March 1, 2022, which shall replace the Decorations and Furnishings currently existing as of the date of this Lease. All such Decorations and Furnishings shall be approved by the City's Chief of Historic Preservation prior to use on-site. The design of all such Decorations and Furnishings, and their layout within the leased area, shall be developed in coordination with and under the advisement of the City Dock Action Committee (CDAC) Design Subcommittee, and will require an HPC Certificate of Approval (COA). The COA may be issued based on new guidelines developed for outside dining areas in addition to current guidelines for sidewalk cafes. The Tenant shall keep the Premises, any Decorations, and any Furnishings free of trash and debris, and in a clean, safe, orderly and functioning (or properly stored) manner at all times.

i. Regardless of any established business hours, the Tenant shall not use the Premises for any purpose, besides storage of the Decorations and tables, chairs, benches, tents, and similar items, between the hours of 11:00 PM and 7:00 AM.

3. Tenant's Responsibilities for Management of the Premises and the Property.

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

- a. Oversight of all operations at the Premises;
- b. Quality assurance for all aspects of the Premises' areas;
- c. Development and assurance of proper security procedures for the Premises; and
- d. Coordination with all of the Other Tenants for the following:
 - (1) Deliveries to any properties abutting or adjacent to the Property;
 - (2) City access pursuant to Paragraph 20(a);
 - (3) Access by any regulated utility company pursuant to Paragraph 20(c);
 - (4) Access for private and City-contracted trash, recycling and yard waste collection services pursuant to Paragraph 20(d);
 - (5) Access through the Property by certain private property owners pursuant to Paragraph 20(e); and
 - (6) Maintenance of barriers around the Property as required and approved by the City, including any needed coordination for moving/removal of such barriers to provide any access to the Property required by this Lease.

4. Rent; Security Deposit.

a. As annual rent for the Premises, the Tenant shall pay unto the City Twenty-Seven Thousand Seven Hundred Dollars and Twelve Cents (\$27,700.12) payable in twelve (12) equal monthly payments of Two Thousand Three Hundred Eight Dollars and Thirty-Four Cents (\$2,308.34) (collectively, the "Rent"). Each payment shall be made promptly when due, in advance, on the first day of each month during the Original Term and any Renewal Term, without deduction, setoff or counterclaim whatsoever, and without demand. The City shall prorate the Rent, and any Additional Rent, if the Effective Date occurs later than July 1, 2021. All payments shall be made payable to the "City of Annapolis" and shall be sent or delivered to the Finance Director, Finance Department, City Hall, 160 Duke of Gloucester Street, Annapolis, Maryland 21401. Rent is based, in part, on a total charge of \$22.50 per parking spot per day for all five tenants (i.e. the Tenant and the Other Tenants), to be included as part of the Premises and/or the leased premises of the Other Tenants. The Rent shall escalate at a rate of two percent (2.0%) on July 1, 2022 and on each July 1st thereafter.

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

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

d. In the event the Rent or Additional Rent under this Lease, or any part thereof, shall remain unpaid for a period of fifteen (15) business days after the day on which it is due, then in addition to all other sums due by the Tenant under this Lease, the Tenant shall pay the City as Additional Rent: (1) late fees equal to five percent (5%) of the unpaid amount, and (2) if an action of any type is filed in any court, reasonable attorney's fees.

e. No later than the Effective Date, the Tenant shall deposit with the City's Finance Director, 160 Duke of Gloucester Street, Annapolis MD, 21401, the amount of Five Thousand Dollars and No Cents (\$5,000.00) (the "Security Deposit"). The City shall have no obligation to pay any interest on the Security Deposit, and may commingle it in an account with other funds. The City, at its option, may apply any part of the Security Deposit towards the payment of outstanding amounts due under this Lease, provided always that the Tenant's liability under this Lease shall not thereby be discharged. Upon any uncured monetary default, the City may request, and the Tenant shall be obligated to deposit, additional security to secure the Tenant's performance under this Lease within ten (10) business days to restore the Security Deposit to its original amount. If not used, the Security Deposit shall be returned to the Tenant within thirty (30) calendar days after the Tenant vacates the Premises in accordance with Paragraph 24.

5. Quiet Enjoyment.

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

6. Utilities/Services.

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

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

c. The Tenant, at its sole cost and expense, shall arrange and pay for any janitorial services that are necessary for the operation and upkeep of the Premises.

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

e. The Tenant, at its sole cost and expense, shall arrange and pay for the removal of all snow and ice from the driveways, roadways, stairs, walkways, sidewalks, parking areas and other rights-of-way located on the Premises.

7. Tenant Equipment, Furnishings, Personal Property.

The Tenant shall retain ownership of all of its trade and business equipment, furnishings and personal property from time to time installed on the Premises. No fixtures, equipment or furnishings may be attached or affixed to the exterior of the surrounding buildings. The Tenant may remove any such fixtures, equipment or furnishings at any such time during the Term and shall remove all of it prior to the expiration of the Lease. Removal shall not cause any damage to the Premises or the Property. The Tenant shall pay for any damages it may cause, which shall be due and payable by the Tenant within thirty (30) calendar days of City invoicing. Any such personal property not removed at the expiration of the Term shall be handled in accordance with Paragraph 24 of this Lease.

8. Repairs and Maintenance.

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

b. The Tenant shall not make or cause to be made any permanent alterations, additions, or improvements to the Premises without obtaining the prior written consent of the City which will be granted in the City's sole and absolute discretion.

c. Prior to the Tenant repairing, replacing or otherwise altering any aspect of the Premises or the Property, the Tenant shall provide the City with thirty (30) calendar day prior written notice specifying the need for and nature of any and all such repairs, replacements or alternations, and providing the City with a copy of all applicable contracts or agreements with any third party hired by the Tenant to perform such repairs, replacements or alterations. The Tenant or its contractors shall not start or undertake any such repairs, replacements or alterations without the prior written approval of the City, and without first obtaining all necessary permits and governmental approvals. Such repairs, replacements or alterations shall be made and rendered by professional contractors licensed in the State of Maryland, be done in a good and workmanlike manner, and shall comply in all respects with all applicable federal, state, local and City laws, ordinances and regulations, including, but not limited to, zoning, building and fire code requirements. The Tenant agrees that all such improvements shall become the property of the City when made, and further, that the Tenant shall be entitled to no reimbursement or re-payment for any such improvements.

d. The City shall have no liability to the Tenant by reason of any inconvenience, annoyance, interruption, or injury to business or other use or occupancy arising from making any

repairs or changes that the City is required or permitted to make in or to any portion of the Premises or the Property, by any other tenant's lease, or by law.

9. Signs.

The Tenant shall not to place or maintain any sign, billboard, marquee, awning, decoration, placard, lettering, advertising matter or other thing of any kind, whether permanent or temporary, on the Premises without first obtaining ~~the City's written consent a sign permit per Planning and Zoning code section 21.070.30 and 21.070.090 which requires approval from the Historic Preservation Commission using the HPC Design Guidelines for signs. Approval is handled by the Chief of Preservation using current Administrative Approval Guidelines.~~ The Tenant shall maintain any sign, billboard, marquee, awning, decoration, placard, lettering or advertising matter or other thing of any kind, as may be approved by the City, and shall repair and replace when necessary to keep in good condition and repair at all times.

10. Driveways, Footways and Parking Areas.

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

11. Non-Discrimination.

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

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

12. No Assignment or Sublease.

The Tenant shall not assign its rights to this Lease to any third parties nor shall it enter into any subleases with other parties, nor shall Tenant permit other persons or parties to occupy the Premises, nor shall it grant any license or concessions to third parties for other uses of the Premises without the prior written consent of the City.

13. Security, Property Loss Damage.

a. The Tenant assumes all risks associated with the security of the Premises. The City shall have no obligation or duty with regard to security. The Tenant shall police, light and maintain the Premises in a clean, safe and secure manner.

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

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

14. Compliance with Laws.

a. The Tenant, at its sole cost and expense, shall keep in force all licenses, consents and permits necessary for the lawful use of the Premises for the purposes of this Lease. The Tenant, at its sole cost and expense, shall promptly comply with and do all things required by any notice served upon it or upon the City in relation to the Premises or any part thereof, from any of the departments or agencies of the City, a county, the State of Maryland, or the United States, if the same shall be caused by the Tenant's use of the Premises. The Tenant shall pay all costs, expenses, claims, fines, penalties, and damages that may in any manner arise out of the failure of the Tenant to comply. Failure to comply with this Paragraph shall constitute a breach of this Lease, and the City may terminate this Lease for default in accordance with Paragraph 22.

b. The Tenant shall have a reasonable time not to exceed ten (10) calendar days to comply with any notice pursuant to Paragraph 14(a), unless such violation relates to public safety, in which case the City may order a temporary suspension of the Tenant's business and other operations pending compliance.

15. Insurance.

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

1. Commercial General Liability Insurance Policy, including contractual liability and property liability insurance for the Premises, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of this Lease, but no less than \$1,000,000.00 per person and \$2,000,000.00 per occurrence in the aggregate, using a Combined Single Limit for bodily injury and property damage.

2. Workers' Compensation as required by Maryland law and, when required, the U.S. Longshoremen's and Harbor Workers' Compensation Act, including standard Other States coverage; Employers' Liability coverage with limits of at least \$100,000.00 each accident,

\$100,000.00 each employee disease, and \$500,000.00 disease policy limit.

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

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

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

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

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

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

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

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

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

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

16. Indemnification.

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

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

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

d. The City, in its sole discretion, may participate in handling its own defense or exclusively handle its own defense, and select its own attorneys, including the City Attorney. The indemnification for reasonable attorney fees applies whether or not the City Attorney or other attorney handles the defense.

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

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

17. Impairment of the City's Title.

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

18. Liens and Encumbrances.

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

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

19. Taxes and Assessments.

a. The Tenant shall pay all impositions including all state, county and City taxes (including real estate ad valorem, sales, use, and occupancy taxes), and assessments of any kind and nature whatsoever, including all interest and penalties on them, which shall or may accrue or be incurred during the Term of this Lease. The Tenant shall pay all such taxes and assessments before any fine, penalty, interest, or cost may be added for nonpayment, and shall furnish to the City, on request, official receipts or other satisfactory proof evidencing such payment. If any tax or assessment is payable in installments over a period of years, the Tenant shall be liable only for payment of those installments falling due and payable during the Term, with appropriate pro-ration in case of fractional years.

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

20. Right of Entry.

a. The City and its employees, representatives, agents, and servants, including any builder or contractor employed by the City, shall have the absolute unconditional right at any and all reasonable times, after not less than twenty-four (24) hours notice to the Tenant (except in the case of an emergency where no such notice is required), to enter the Premises or the Property for any of the following purposes: (a) to inspect the Premises and the Property; (b) to make such repairs and/or changes in the Premises or the Property as the City may deem necessary or proper; (c) to access any City owned or maintained utility; (d) to enforce and carry out any provision of this Lease; (e) to perform any snow removal or related operations on the Property and any adjacent roadways; (f) for any purpose relating to the safety, protection or preservation of the Premises or the Property; or (g) for any other purpose related to the enforcement of this Lease.

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

c. Any regulated utility company and its employees, representatives, agents, and servants, including any contractor employed by such company, shall have the absolute unconditional right at any and all reasonable times, after not less than twenty-four (24) hours notice to the Tenant (except in the case of an emergency where no such notice is required), to enter the Premises or the Property to access any company owned or maintained utility.

d. The Tenant, in coordination with the Other Tenants as specified in Paragraph 3, shall provide for regular access to the Property, and the Premises as applicable, for both private and City-contracted trash and recycling services.

e. The Tenant, in coordination with the Other Tenants as specified in Paragraph 3, shall provide for access through the Property, and the Premises as applicable, on an as-requested basis for private property owners abutting to or adjacent to the Property as relates to larger delivery vehicles, moving vehicles, or construction vehicles.

21. Reservation of Governmental Authority.

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

22. Defaults or Breach.

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

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

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

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

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

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

6. Failure by the Tenant to make any payment of rent, mortgage, loan, or other payments required to be made by the Tenant in order to retain ownership, tenancy, or custody and control of the primary business premises.

7. Being delinquent on any other City obligation, tax, payment, or other liability, including any other leases or agreements with the City.

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

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

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

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

d. The City, in its sole discretion, may afford the Tenant a reasonable time to cure any default or breach of this Lease before declaring a Default or Breach and terminating this Lease.

23. Termination for Convenience.

Either party may terminate this Lease for convenience, for any reason, and at any time by providing sixty (60) calendar days prior written notice to the other party. Any such termination of this Lease shall not discharge the Tenant from any obligation it may have to the City by reason of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events or basis of which shall occur or arise) prior to such termination, whether the same be known or unknown at the time of such termination. The City shall prorate the Rent, and any Additional Rent, as of the date of termination for convenience.

24. Surrender of Premises.

a. On the last day or earlier termination of this Lease, the Tenant shall vacate the Premises and leave it in good condition and repair, normal wear and tear excepted. If the Premises are not surrendered when required, the Tenant shall indemnify, defend and hold the Indemnified Parties harmless against loss or liability resulting from the delay by the Tenant in vacating the Premises, including, without limitation, any claims made by any succeeding tenant or other occupant founded on such delay. Any holding over with the consent of the City after the

termination of this Lease shall be construed to be a tenancy from month-to-month upon the same terms and conditions as provided in this Lease, to the extent applicable.

b. On the last day or earlier termination of this Lease, and in accordance with Paragraph 7 of this Lease, the Tenant shall, within thirty (30) calendar days and at its own cost and expense, dismantle and remove all of its personal property from the Premises. Any such property not removed at the expiration of this Lease in accordance with the preceding sentence and the Tenant's continued failure to remove the same within thirty (30) calendar days after receipt of notice from the City, shall be deemed abandoned and, at the election of the City, shall become the property of the City without payment of any kind to the Tenant, without increasing the City's liability to the Tenant, and for any disposition of it as the City decides to make.

c. Within ten (10) calendar days of vacating, the City shall tour the Premises, with the Tenant present if possible, to determine the condition of the Premises. Any items determined to be in need of correction or repair shall be corrected or repaired by the City, and shall be invoiced by the City and paid by the Tenant within thirty (30) calendar days of such invoicing.

25. Damage to Premises.

In case of any substantial loss of or damage to the Premises as the result of a taking under the power of eminent domain, or by fire, storm or other casualty or force majeure event, the City in its sole and absolute discretion may determine whether or not, and to what extent, to repair or restore any of the Premises, or to terminate this Lease pursuant to Paragraph 23. If the City decides to repair or restore, and any portion of the Premises remains suitable for the Tenant's use, then the Tenant shall be entitled to utilize that portion of the Premises. The City, as applicable and appropriate, shall prorate any Rent due by the Tenant to account for any decreased size of the Premises. If the City either decides not to repair and restore the Premises, and/or repairs and restores the Premises, but no portion of the Premises remains suitable for the Tenant's use, then this Lease shall be terminated pursuant to Paragraph 23. It shall be the sole responsibility of the Tenant to restore, repair and/or remove its own personal property, fixtures and equipment.

26. Modification.

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

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

27. Representations and Warranties.

The Tenant represents and warrants to the City that:

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

- b. The Tenant is authorized to execute, deliver and perform this Lease.
- c. The Tenant shall not violate the order of any court or governmental authority or breach any contract or other agreement by entering into this Lease.
- d. There are no actions, suits, etc. pending or, to the best of its knowledge, threatened against the Tenant or which might adversely affect the Tenant's right to enter into or perform under this Lease.
- e. The Tenant has been represented (or has had the opportunity to be represented) in the execution of this Lease by independent legal counsel.
- f. There exists no actual or potential conflict of interest between its performance under this Lease and its engagement or involvement in any other agreement, or personal or professional activities. In the event such conflict or potential conflict arises during the Term of this Lease, or any renewal thereof, the Tenant shall immediately advise the City in writing thereof.
- g. The representations set forth in the Lease shall be true and valid throughout the Term.

28. Access to Records.

- a. At any time during normal business hours with reasonable prior notice from the City, and as often as the City may deem necessary, the Tenant shall make available to and allow inspection and copying by the City, its employees or agents, of all books, records, accounts, reports, information and documentation of the Tenant related to the subject matter of this Lease, including, but not limited to, all contracts, invoices, payroll, and financial audits.
- b. The Tenant shall maintain all books, records, accounts, reports, information and documentation required under this Lease for a period of at least three (3) years after the date of termination of this Lease including any renewals, except in the event of litigation or settlement of claims arising from the performance of this Lease, in which case the Tenant shall do so until three (3) years after final adjudication of such litigation or settlement of claims.

29. Remedies Cumulative and Concurrent.

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

30. Waiver of Remedies for Breach or Default.

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

later time or times.

31. Independent Contractor Status.

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

32. Binding Effect.

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

33. Governing Law.

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

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

34. Recitals.

The Recitals of this Lease are incorporated into this Lease.

35. Severability.

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

36. Survival.

Those paragraphs in this Lease which by their nature are intended to survive shall survive the termination of this Lease.

37. Time is of the Essence.

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

38. Authorization.

This Lease is authorized by the City Council pursuant to Ordinance O-30-21.

39. Counterparts.

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

40. Notice.

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

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

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

To the Tenant: Middleton's Tavern, Ltd.
 2 Market Space
 Annapolis, Maryland 21401
 Attn: Christina Nokes, jj.wine@verizon.net

40. Guaranty for Other Tenants.

If any of the Other Tenants default, abandon, or otherwise stop using their leased portion(s) of the Property during the Original Term or any Renewal Term (each a "Defaulted Lease"), then the Tenant shall coordinate with the remaining Other Tenants to have either the Tenant or one of the remaining Other Tenants assume the Defaulted Lease, with the Defaulted Lease cost paid by the assuming party. Such assumption of a Defaulted Lease shall be documented through a written amendment to the assuming party's lease for the Property.

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

WITNESS:

MIDDLETON'S TAVERN, LTD.

By: _____
Name: Christina Nokes (Seal)
Title:

ATTEST:

CITY OF ANNAPOLIS

Regina C. Watkins-Eldridge, MMC,
City Clerk

By: _____
Gavin Buckley, Mayor (Seal)

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

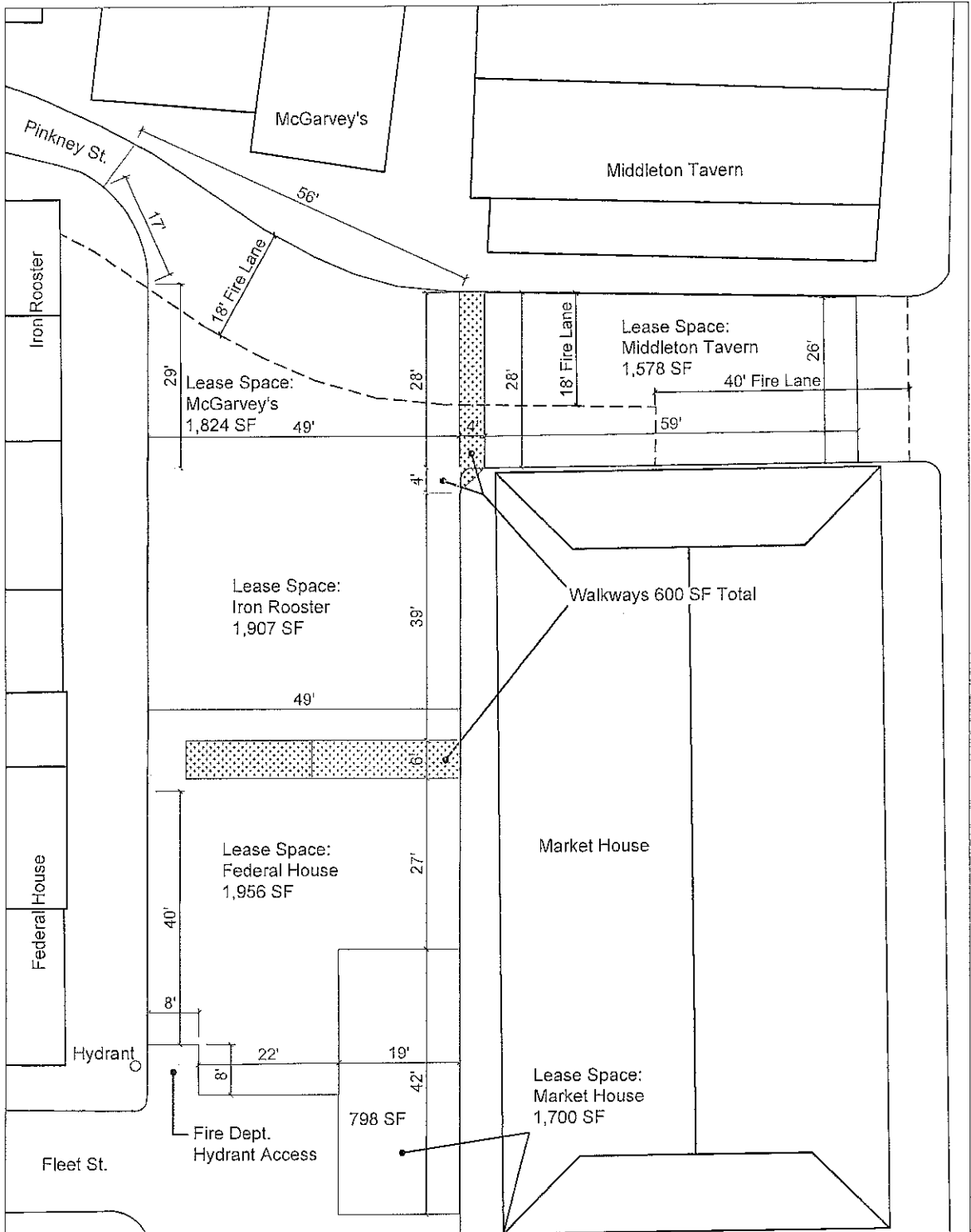
Office of Law
D. Michael Lyles, City Attorney

**ATTACHMENT A
DEED**

See attached pages.

**ATTACHMENT B
PREMISES**

See attached page.



TABULATION OF SQUARE FOOT AREAS

	Subtotal
MIDDLETON TAVERN	1,578
APPORTIONED WALKWAY AREA-RED	120
	1,698
MCGARVEYS	1,824
APPORTIONED WALKWAY AREA-YELLOW	120
	1,944
IRON ROOSTER	1,907
APPORTIONED WALKWAY AREA-GREEN	120
	2,027
FEDERAL HOUSE	1,956
APPORTIONED WALKWAY AREA-BLUE	120
	2,076
MARKET HOUSE	1,700
APPORTIONED WALKWAY AREA-PURPLE	120
	1,820
TOTAL	9,565

ATTACHMENT C PURPOSE

The following Tenant business-related uses are permitted under the terms of the Lease, and considered as part of the Purpose as defined in Paragraph 2(a) of the Lease:

- 1) Outdoor dining;
- 2) Tenant business-related special events;
- 3) Festivals;
- 4) Markets;
- 5) Event watch parties;
- 6) Movie nights;
- 7) Live music;
- 8) Recreational events;
- 9) Vendor booths;
- 10) Charity events; and
- 11) Tented events for inclement/cold weather.

These uses are subject to the terms and conditions of the Lease, as well as all applicable laws, regulations, and other statutory permitted governmental oversight. For uses numbered 2 through 10, the Tenant shall complete and submit a City Special Events Application and Agreement to the City Development and Events Specialist at least thirty (30) calendar days in advance of any such use, not for approval, but for informational purposes only to allow for coordination of City resources, traffic control, and emergency management as applicable. The Tenant shall not be required to pay any Application Fees, but may be required to pay Location Fees and/or Service Fees, as defined in that Application, as applicable to each use.



Chartered 1708

City of Annapolis
160 Duke of Gloucester Street
Annapolis, MD 21401

LEASE AGREEMENT BETWEEN THE CITY OF ANNAPOLIS AND NEW MARKET HOUSE LLC FOR MARKET SPACE

THIS LEASE AGREEMENT ("Lease") is made this _____ day of _____ 2021, by and between the City of Annapolis, a municipal corporation of the State of Maryland (the "City"), and NEW MARKET HOUSE LLC, a Maryland limited liability company (the "Tenant").

WHEREAS, the City is the fee simple owner of a parcel of land consisting of nineteen (19) marked parking spaces and related roadways, located at Market Space, Annapolis, Maryland 21401 (collectively, the "Property"), and as more particularly described in a deed dated July 28, 1784, and attached hereto and incorporated herein as Attachment A; and

WHEREAS, the Tenant operates a business located adjacent to the Property; and

WHEREAS, the Tenant wishes to lease a portion of the Property, including one hundred twenty (120) square feet of exclusive walkway area, together with a right to use, in common with others, adjoining sidewalks abutting the Property, all as further depicted in Attachment B (the "Premises") attached hereto and incorporated herein, but excluding parking meters, bollards and chains, and parking and traffic control signage; and

WHEREAS, the Tenant wishes to lease the Premises for the purpose of extending its indoor restaurant seating as outdoor dining, and related special event, festival, and market activities, in connection with its business as further described herein; and

WHEREAS, McGarvey's Annapolis, LLC, Iron Rooster-Annapolis, LLC, Bembe Beach, LLC, and Middleton's Tavern, Ltd. (collectively, the "Other Tenants") wish to lease the remaining portions of the Property for similar purposes, as depicted in Attachment B, and in accordance with separate lease agreements with the City; and

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

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

1. Term; Tenant Termination with Start of the City Dock Project.

a. The City leases to the Tenant and the Tenant hereby leases from the City Premises for a Term commencing on the Effective Date, as defined herein November 1, 2021, and

terminating on June 30, 2022 (the "Original Term"), unless terminated earlier in accordance with the terms of this Lease. ~~For purposes of this Lease, the "Effective Date" shall be that date falling thirty (30) calendars after the expiration or termination of the State of Maryland State of Emergency related to the COVID-19 Pandemic.~~

b. Provided that the Tenant is not otherwise in default hereunder and continues to occupy the Premises, and subject to the City's termination rights herein, the Tenant shall have the option to renew this Lease for successive terms of one (1) year upon the same terms and conditions herein except as may otherwise be provided for in a written amendment to this Lease (each a "Renewal Term" and collectively the "Renewal Terms"); provided that regardless of any Term or Renewal Term currently in effect, the Lease shall expire on the Start of the City Dock Project, as defined herein. Each Renewal Term shall commence and run with the City fiscal year (July 1st – June 30th). If the Tenant elects to exercise its option, it shall give the City at least sixty (60) calendar days written notice before the expiration of the Term, or any Renewal Term thereof.

c. For purposes of this Lease, "Start of the City Dock Project" shall be that date on which construction of the revitalization work at Market Space begins. The City shall provide the Tenant prior notice of the estimated Start of the City Dock Project date at least sixty (60) calendar days prior to the estimated date and the exact Start of the City Dock Project date as soon as reasonably established by the City. Within thirty (30) calendar days of such notice, the Tenant may terminate this Lease for convenience by providing written notice to the City that specifies a termination date prior to the Start of the City Dock Project date. Any such termination of this Lease by the Tenant shall not discharge the Tenant from any obligation it may have to the City by reason of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events or basis of which shall occur or arise) prior to such termination, whether the same be known or unknown at the time of such termination. The City shall prorate the Rent, and any Additional Rent, as of the date of termination for convenience.

2. Use of Premises.

a. The Tenant may use and occupy the Premises during the Term and any Renewal Term of this Lease only for the purpose of outdoor dining, and related special event, festival, market, and similar activities, in connection with its business (the "Purpose"), as further described in Attachment C attached hereto and incorporated herein, and for no other purpose whatsoever. The space on the Property leased to the Other Tenants is expressly and specifically excluded from this Lease, and the Other Tenants shall not be considered parties to or third party beneficiaries of this Lease.

b. The Tenant accepts the Premises in "as is" condition. The City makes no representation or warranty with respect to the condition or state of the land, the Property, or the Premises, or its fitness for any particular use, and the City shall not be liable for any latent or patent defect thereon. Unless as otherwise expressly provided in this Lease, the City does not make, and specifically disclaims, any representations, warranties or covenants of any kind or character, express or implied, with respect to the nature, condition, economical, functional, environmental or physical condition of the Premises. The Tenant represents and warrants to the City that: (1) the Tenant is knowledgeable in matters of real estate or had an opportunity to consult with a real estate professional; (2) the Tenant is relying solely on the Tenant's own expertise and/or the expertise of the Tenant's consultants with respect to the Premises; (3) the Tenant shall

assume all risk that adverse matters, including, but not limited to, adverse physical and environmental conditions, may not have been revealed through the Tenant's, or the Tenant's consultants', inspections, tests, studies, and investigations of the Premises.

c. The Tenant shall not use or occupy or permit the Premises, or any part thereof including, but not limited to, the Property, to be used or occupied, nor do or permit anything to be done in or on the Premises in a manner which would in any way (1) violate any of the terms of this Lease; (2) make it difficult for either the City or the Tenant to obtain fire or other insurance required by this Lease at standard rates; (3) cause or create a public or private nuisance in or on the Premises or the Property; (4) tend to impair or interfere with the character, reputation or appearance of the Premises or the Property; or (5) impede or interfere with the provision of any governmental services to the Property and neighboring residents and businesses, including but not limited, to fire and emergency services, utilities, police and public works.

d. The Tenant shall comply with all requirements of the City Fire Marshal's Office in its use of the Premises and the Property. The Tenant shall insure that no personal property, structures, or other materials remain in the fire lane (the "Fire Lane"), as depicted on Attachment B, at any time when the Tenant's business operations are closed or otherwise have no available staff to remove personal property from the Fire Lane.

e. The Tenant shall comply with all requirements of the Americans with Disabilities Act (ADA) in its use of the Premises, the Property, and any abutting public walkways including, but limited to any sidewalks, and any private property entrances and exits.

f. Music or other amplified sound on the Premises shall not exceed the maximum decibel levels or the time restrictions specified in Chapter 11.12 of the Code of the City of Annapolis, as may be amended.

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

h. The Tenant may install or otherwise place non-permanent decorative, architectural, or vegetative elements to the Premises (collectively, the "Decorations"), and may also place its own tables, chairs, benches, tents, lighting fixtures, and similar items (collectively, the "Furnishings") on the Premises for use as outdoor dining during the regular business hours of the Tenant's business establishment. The Tenant shall use good faith efforts to purchase and install all of the new Decorations and the new Furnishings on the Premises no later than March 1, 2022, which shall replace the Decorations and Furnishings currently existing as of the date of this Lease. All such Decorations and Furnishings shall be approved by the City's Chief of Historic Preservation prior to use on-site. The design of all such Decorations and Furnishings, and their layout within the leased area, shall be developed in coordination with and under the advisement of the City Dock Action Committee (CDAC) Design Subcommittee, and will require an HPC Certificate of Approval (COA). The COA may be issued based on new guidelines developed for outside dining areas in addition to current guidelines for sidewalk cafes. The Tenant shall keep the Premises, any Decorations, and any Furnishings free of trash and debris, and in a clean, safe, orderly and functioning (or properly stored) manner at all times.

i. Regardless of any established business hours, the Tenant shall not use the Premises for any purpose, besides storage of the Decorations and tables, chairs, benches, tents, and similar items, between the hours of 11:00 PM and 7:00 AM.

3. Tenant's Responsibilities for Management of the Premises and the Property.

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

- a. Oversight of all operations at the Premises;
- b. Quality assurance for all aspects of the Premises' areas;
- c. Development and assurance of proper security procedures for the Premises; and
- d. Coordination with all of the Other Tenants for the following:
 - (1) Deliveries to any properties abutting or adjacent to the Property;
 - (2) City access pursuant to Paragraph 20(a);
 - (3) Access by any regulated utility company pursuant to Paragraph 20(c);
 - (4) Access for private and City-contracted trash, recycling and yard waste collection services pursuant to Paragraph 20(d);
 - (5) Access through the Property by certain private property owners pursuant to Paragraph 20(e); and
 - (6) Maintenance of barriers around the Property as required and approved by the City, including any needed coordination for moving/removal of such barriers to provide any access to the Property required by this Lease.

4. Rent; Security Deposit.

a. As annual rent for the Premises, the Tenant shall pay unto the City Twenty-Nine Thousand Six Hundred Ninety Dollars and Thirty-Six Cents (\$29,690.36) payable in twelve (12) equal monthly payments of Two Thousand Four Hundred Seventy-Four Dollars and Twenty Cents (\$2,474.20) (collectively, the "Rent"). Each payment shall be made promptly when due, in advance, on the first day of each month during the Original Term and any Renewal Term, without deduction, setoff or counterclaim whatsoever, and without demand. The City shall prorate the Rent, and any Additional Rent, if the Effective Date occurs later than July 1, 2021. All payments shall be made payable to the "City of Annapolis" and shall be sent or delivered to the Finance Director, Finance Department, City Hall, 160 Duke of Gloucester Street, Annapolis, Maryland 21401. Rent is based, in part, on a total charge of \$22.50 per parking spot per day for all five tenants (i.e. the Tenant and the Other Tenants), to be included as part of the Premises and/or the leased premises of the Other Tenants. The Rent shall escalate at a rate of two percent (2.0%) on July 1, 2022 and on each July 1st thereafter.

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

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

d. In the event the Rent or Additional Rent under this Lease, or any part thereof, shall remain unpaid for a period of fifteen (15) business days after the day on which it is due, then in addition to all other sums due by the Tenant under this Lease, the Tenant shall pay the City as Additional Rent: (1) late fees equal to five percent (5%) of the unpaid amount, and (2) if an action of any type is filed in any court, reasonable attorney's fees.

e. No later than the Effective Date, the Tenant shall deposit with the City's Finance Director, 160 Duke of Gloucester Street, Annapolis MD, 21401, the amount of Five Thousand Dollars and No Cents (\$5,000.00) (the "Security Deposit"). The City shall have no obligation to pay any interest on the Security Deposit, and may commingle it in an account with other funds. The City, at its option, may apply any part of the Security Deposit towards the payment of outstanding amounts due under this Lease, provided always that the Tenant's liability under this Lease shall not thereby be discharged. Upon any uncured monetary default, the City may request, and the Tenant shall be obligated to deposit, additional security to secure the Tenant's performance under this Lease within ten (10) business days to restore the Security Deposit to its original amount. If not used, the Security Deposit shall be returned to the Tenant within thirty (30) calendar days after the Tenant vacates the Premises in accordance with Paragraph 24.

5. Quiet Enjoyment.

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

6. Utilities/Services.

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

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

c. The Tenant, at its sole cost and expense, shall arrange and pay for any janitorial services that are necessary for the operation and upkeep of the Premises.

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

e. The Tenant, at its sole cost and expense, shall arrange and pay for the removal of all snow and ice from the driveways, roadways, stairs, walkways, sidewalks, parking areas and other rights-of-way located on the Premises.

7. Tenant Equipment, Furnishings, Personal Property.

The Tenant shall retain ownership of all of its trade and business equipment, furnishings and personal property from time to time installed on the Premises. No fixtures, equipment or furnishings may be attached or affixed to the exterior of the surrounding buildings. The Tenant may remove any such fixtures, equipment or furnishings at any such time during the Term and shall remove all of it prior to the expiration of the Lease. Removal shall not cause any damage to the Premises or the Property. The Tenant shall pay for any damages it may cause, which shall be due and payable by the Tenant within thirty (30) calendar days of City invoicing. Any such personal property not removed at the expiration of the Term shall be handled in accordance with Paragraph 24 of this Lease.

8. Repairs and Maintenance.

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

b. The Tenant shall not make or cause to be made any permanent alterations, additions, or improvements to the Premises without obtaining the prior written consent of the City which will be granted in the City's sole and absolute discretion.

c. Prior to the Tenant repairing, replacing or otherwise altering any aspect of the Premises or the Property, the Tenant shall provide the City with thirty (30) calendar day prior written notice specifying the need for and nature of any and all such repairs, replacements or alternations, and providing the City with a copy of all applicable contracts or agreements with any third party hired by the Tenant to perform such repairs, replacements or alterations. The Tenant or its contractors shall not start or undertake any such repairs, replacements or alterations without the prior written approval of the City, and without first obtaining all necessary permits and governmental approvals. Such repairs, replacements or alterations shall be made and rendered by professional contractors licensed in the State of Maryland, be done in a good and workmanlike manner, and shall comply in all respects with all applicable federal, state, local and City laws, ordinances and regulations, including, but not limited to, zoning, building and fire code requirements. The Tenant agrees that all such improvements shall become the property of the City when made, and further, that the Tenant shall be entitled to no reimbursement or re-payment for any such improvements.

d. The City shall have no liability to the Tenant by reason of any inconvenience, annoyance, interruption, or injury to business or other use or occupancy arising from making any

repairs or changes that the City is required or permitted to make in or to any portion of the Premises or the Property, by any other tenant's lease, or by law.

9. Signs.

The Tenant shall not to place or maintain any sign, billboard, marquee, awning, decoration, placard, lettering, advertising matter or other thing of any kind, whether permanent or temporary, on the Premises without first obtaining the City's written consent a sign permit per Planning and Zoning code section 21.070.30 and 21.070.090 which requires approval from the Historic Preservation Commission using the HPC Design Guidelines for signs. Approval is handled by the Chief of Preservation using current Administrative Approval Guidelines. The Tenant shall maintain any sign, billboard, marquee, awning, decoration, placard, lettering or advertising matter or other thing of any kind, as may be approved by the City, and shall repair and replace when necessary to keep in good condition and repair at all times.

10. Driveways, Footways and Parking Areas.

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

11. Non-Discrimination.

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

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

12. No Assignment or Sublease.

The Tenant shall not assign its rights to this Lease to any third parties nor shall it enter into any subleases with other parties, nor shall Tenant permit other persons or parties to occupy the Premises, nor shall it grant any license or concessions to third parties for other uses of the Premises without the prior written consent of the City.

13. Security, Property Loss Damage.

a. The Tenant assumes all risks associated with the security of the Premises. The City shall have no obligation or duty with regard to security. The Tenant shall police, light and maintain the Premises in a clean, safe and secure manner.

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

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

14. Compliance with Laws.

a. The Tenant, at its sole cost and expense, shall keep in force all licenses, consents and permits necessary for the lawful use of the Premises for the purposes of this Lease. The Tenant, at its sole cost and expense, shall promptly comply with and do all things required by any notice served upon it or upon the City in relation to the Premises or any part thereof, from any of the departments or agencies of the City, a county, the State of Maryland, or the United States, if the same shall be caused by the Tenant's use of the Premises. The Tenant shall pay all costs, expenses, claims, fines, penalties, and damages that may in any manner arise out of the failure of the Tenant to comply. Failure to comply with this Paragraph shall constitute a breach of this Lease, and the City may terminate this Lease for default in accordance with Paragraph 22.

b. The Tenant shall have a reasonable time not to exceed ten (10) calendar days to comply with any notice pursuant to Paragraph 14(a), unless such violation relates to public safety, in which case the City may order a temporary suspension of the Tenant's business and other operations pending compliance.

15. Insurance.

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

1. Commercial General Liability Insurance Policy, including contractual liability and property liability insurance for the Premises, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of this Lease, but no less than \$1,000,000.00 per person and \$2,000,000.00 per occurrence in the aggregate, using a Combined Single Limit for bodily injury and property damage.

2. Workers' Compensation as required by Maryland law and, when required, the U.S. Longshoremen's and Harbor Workers' Compensation Act, including standard Other States coverage; Employers' Liability coverage with limits of at least \$100,000.00 each accident,

\$100,000.00 each employee disease, and \$500,000.00 disease policy limit.

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

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

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

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

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

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

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

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

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

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

16. Indemnification.

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

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

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

d. The City, in its sole discretion, may participate in handling its own defense or exclusively handle its own defense, and select its own attorneys, including the City Attorney. The indemnification for reasonable attorney fees applies whether or not the City Attorney or other attorney handles the defense.

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

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

17. Impairment of the City's Title.

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

18. Liens and Encumbrances.

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

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

19. Taxes and Assessments.

a. The Tenant shall pay all impositions including all state, county and City taxes (including real estate ad valorem, sales, use, and occupancy taxes), and assessments of any kind and nature whatsoever, including all interest and penalties on them, which shall or may accrue or be incurred during the Term of this Lease. The Tenant shall pay all such taxes and assessments before any fine, penalty, interest, or cost may be added for nonpayment, and shall furnish to the City, on request, official receipts or other satisfactory proof evidencing such payment. If any tax or assessment is payable in installments over a period of years, the Tenant shall be liable only for payment of those installments falling due and payable during the Term, with appropriate pro-ration in case of fractional years.

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

20. Right of Entry.

a. The City and its employees, representatives, agents, and servants, including any builder or contractor employed by the City, shall have the absolute unconditional right at any and all reasonable times, after not less than twenty-four (24) hours notice to the Tenant (except in the case of an emergency where no such notice is required), to enter the Premises or the Property for any of the following purposes: (a) to inspect the Premises and the Property; (b) to make such repairs and/or changes in the Premises or the Property as the City may deem necessary or proper; (c) to access any City owned or maintained utility; (d) to enforce and carry out any provision of this Lease; (e) to perform any snow removal or related operations on the Property and any adjacent roadways; (f) for any purpose relating to the safety, protection or preservation of the Premises or the Property; or (g) for any other purpose related to the enforcement of this Lease.

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

c. Any regulated utility company and its employees, representatives, agents, and servants, including any contractor employed by such company, shall have the absolute unconditional right at any and all reasonable times, after not less than twenty-four (24) hours notice to the Tenant (except in the case of an emergency where no such notice is required), to enter the Premises or the Property to access any company owned or maintained utility.

d. The Tenant, in coordination with the Other Tenants as specified in Paragraph 3, shall provide for regular access to the Property, and the Premises as applicable, for both private and City-contracted trash and recycling services.

e. The Tenant, in coordination with the Other Tenants as specified in Paragraph 3, shall provide for access through the Property, and the Premises as applicable, on an as-requested basis for private property owners abutting to or adjacent to the Property as relates to larger delivery vehicles, moving vehicles, or construction vehicles.

21. Reservation of Governmental Authority.

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

22. Defaults or Breach.

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

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

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

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

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

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

6. Failure by the Tenant to make any payment of rent, mortgage, loan, or other payments required to be made by the Tenant in order to retain ownership, tenancy, or custody and control of the primary business premises.

7. Being delinquent on any other City obligation, tax, payment, or other liability, including any other leases or agreements with the City.

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

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

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

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

d. The City, in its sole discretion, may afford the Tenant a reasonable time to cure any default or breach of this Lease before declaring a Default or Breach and terminating this Lease.

23. Termination for Convenience.

Either party may terminate this Lease for convenience, for any reason, and at any time by providing sixty (60) calendar days prior written notice to the other party. Any such termination of this Lease shall not discharge the Tenant from any obligation it may have to the City by reason of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events or basis of which shall occur or arise) prior to such termination, whether the same be known or unknown at the time of such termination. The City shall prorate the Rent, and any Additional Rent, as of the date of termination for convenience.

24. Surrender of Premises.

a. On the last day or earlier termination of this Lease, the Tenant shall vacate the Premises and leave it in good condition and repair, normal wear and tear excepted. If the Premises are not surrendered when required, the Tenant shall indemnify, defend and hold the Indemnified Parties harmless against loss or liability resulting from the delay by the Tenant in vacating the Premises, including, without limitation, any claims made by any succeeding tenant or other occupant founded on such delay. Any holding over with the consent of the City after the

termination of this Lease shall be construed to be a tenancy from month-to-month upon the same terms and conditions as provided in this Lease, to the extent applicable.

b. On the last day or earlier termination of this Lease, and in accordance with Paragraph 7 of this Lease, the Tenant shall, within thirty (30) calendar days and at its own cost and expense, dismantle and remove all of its personal property from the Premises. Any such property not removed at the expiration of this Lease in accordance with the preceding sentence and the Tenant's continued failure to remove the same within thirty (30) calendar days after receipt of notice from the City, shall be deemed abandoned and, at the election of the City, shall become the property of the City without payment of any kind to the Tenant, without increasing the City's liability to the Tenant, and for any disposition of it as the City decides to make.

c. Within ten (10) calendar days of vacating, the City shall tour the Premises, with the Tenant present if possible, to determine the condition of the Premises. Any items determined to be in need of correction or repair shall be corrected or repaired by the City, and shall be invoiced by the City and paid by the Tenant within thirty (30) calendar days of such invoicing.

25. Damage to Premises.

In case of any substantial loss of or damage to the Premises as the result of a taking under the power of eminent domain, or by fire, storm or other casualty or force majeure event, the City in its sole and absolute discretion may determine whether or not, and to what extent, to repair or restore any of the Premises, or to terminate this Lease pursuant to Paragraph 23. If the City decides to repair or restore, and any portion of the Premises remains suitable for the Tenant's use, then the Tenant shall be entitled to utilize that portion of the Premises. The City, as applicable and appropriate, shall prorate any Rent due by the Tenant to account for any decreased size of the Premises. If the City either decides not to repair and restore the Premises, and/or repairs and restores the Premises, but no portion of the Premises remains suitable for the Tenant's use, then this Lease shall be terminated pursuant to Paragraph 23. It shall be the sole responsibility of the Tenant to restore, repair and/or remove its own personal property, fixtures and equipment.

26. Modification.

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

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

27. Representations and Warranties.

The Tenant represents and warrants to the City that:

a. The Tenant is a limited liability company organized under the laws of the State of Maryland, and is thus qualified to do business in and is in good standing with the State of Maryland, and is duly authorized according to its governing documents to conduct the business in which it is engaged and as described in this Lease.

- b. The Tenant is authorized to execute, deliver and perform this Lease.
- c. The Tenant shall not violate the order of any court or governmental authority or breach any contract or other agreement by entering into this Lease.
- d. There are no actions, suits, etc. pending or, to the best of its knowledge, threatened against the Tenant or which might adversely affect the Tenant's right to enter into or perform under this Lease.
- e. The Tenant has been represented (or has had the opportunity to be represented) in the execution of this Lease by independent legal counsel.
- f. There exists no actual or potential conflict of interest between its performance under this Lease and its engagement or involvement in any other agreement, or personal or professional activities. In the event such conflict or potential conflict arises during the Term of this Lease, or any renewal thereof, the Tenant shall immediately advise the City in writing thereof.
- g. The representations set forth in the Lease shall be true and valid throughout the Term.

28. Access to Records.

- a. At any time during normal business hours with reasonable prior notice from the City, and as often as the City may deem necessary, the Tenant shall make available to and allow inspection and copying by the City, its employees or agents, of all books, records, accounts, reports, information and documentation of the Tenant related to the subject matter of this Lease, including, but not limited to, all contracts, invoices, payroll, and financial audits.
- b. The Tenant shall maintain all books, records, accounts, reports, information and documentation required under this Lease for a period of at least three (3) years after the date of termination of this Lease including any renewals, except in the event of litigation or settlement of claims arising from the performance of this Lease, in which case the Tenant shall do so until three (3) years after final adjudication of such litigation or settlement of claims.

29. Remedies Cumulative and Concurrent.

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

30. Waiver of Remedies for Breach or Default.

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

later time or times.

31. Independent Contractor Status.

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

32. Binding Effect.

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

33. Governing Law.

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

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

34. Recitals.

The Recitals of this Lease are incorporated into this Lease.

35. Severability.

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

36. Survival.

Those paragraphs in this Lease which by their nature are intended to survive shall survive the termination of this Lease.

37. Time is of the Essence.

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

38. Authorization.

This Lease is authorized by the City Council pursuant to Ordinance O-30-21.

39. Counterparts.

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

40. Notice.

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

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

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

To the Tenant: New Market House, LLC
25 Market Space
Annapolis, Maryland 21401
Attn: Jody Danek, jodydanek@gmail.com

40. Guaranty for Other Tenants.

If any of the Other Tenants default, abandon, or otherwise stop using their leased portion(s) of the Property during the Original Term or any Renewal Term (each a "Defaulted Lease"), then the Tenant shall coordinate with the remaining Other Tenants to have either the Tenant or one of the remaining Other Tenants assume the Defaulted Lease, with the Defaulted Lease cost paid by the assuming party. Such assumption of a Defaulted Lease shall be documented through a written amendment to the assuming party's lease for the Property.

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

WITNESS:

NEW MARKET HOUSE, LLC

By: _____
Name: Jody Danek (Seal)
Title:

ATTEST:

CITY OF ANNAPOLIS

Regina C. Watkins-Eldridge, MMC,
City Clerk

By: _____
Gavin Buckley, Mayor (Seal)

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

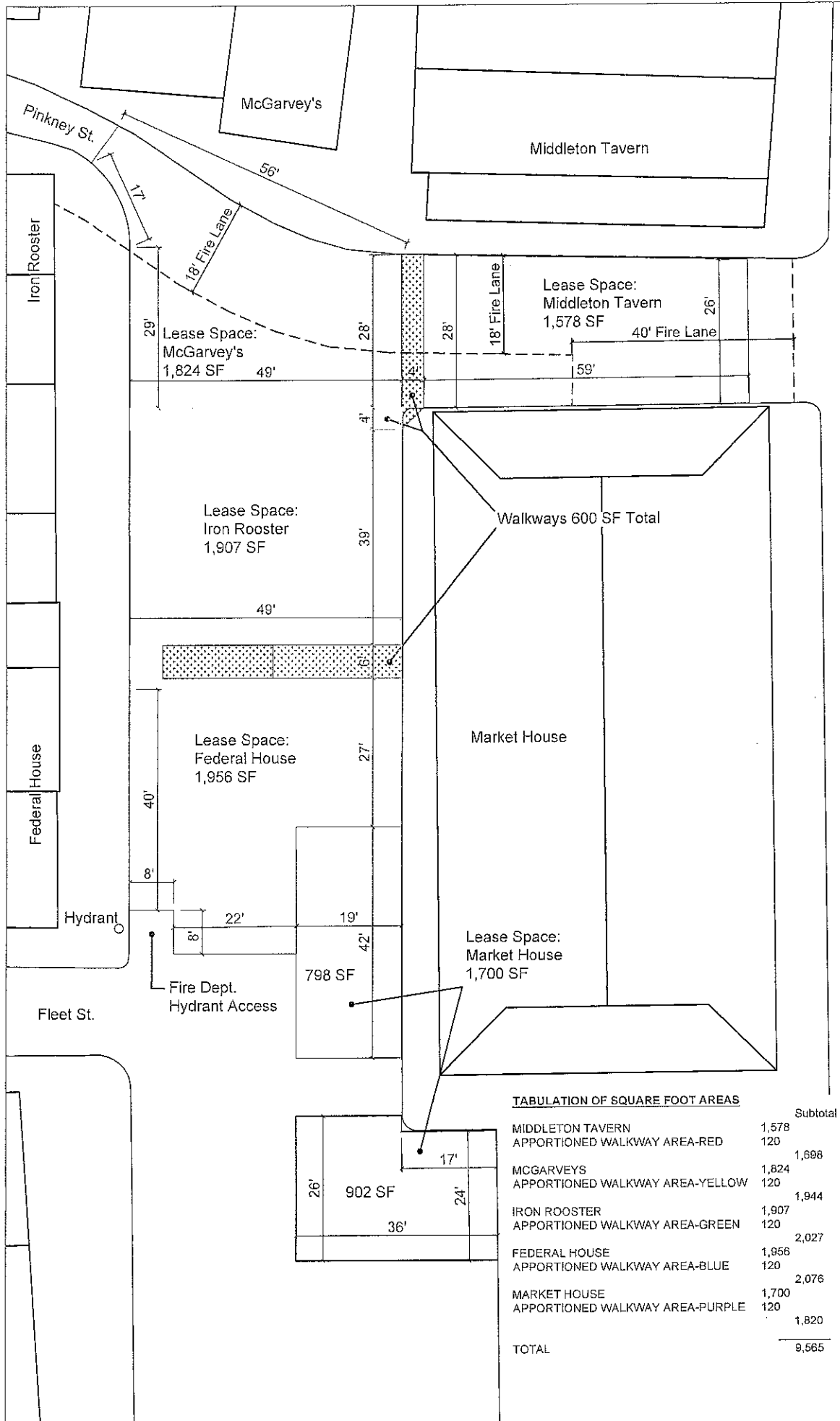
Office of Law
D. Michael Lyles, City Attorney

**ATTACHMENT A
DEED**

See attached pages.

**ATTACHMENT B
PREMISES**

See attached page.



TABULATION OF SQUARE FOOT AREAS

	Subtotal
MIDDLETON TAVERN	1,578
APPORTIONED WALKWAY AREA-RED	120
	1,698
MCGARVEYS	1,824
APPORTIONED WALKWAY AREA-YELLOW	120
	1,944
IRON ROOSTER	1,907
APPORTIONED WALKWAY AREA-GREEN	120
	2,027
FEDERAL HOUSE	1,956
APPORTIONED WALKWAY AREA-BLUE	120
	2,076
MARKET HOUSE	1,700
APPORTIONED WALKWAY AREA-PURPLE	120
	1,820
TOTAL	9,565

**ATTACHMENT C
PURPOSE**

The following Tenant business-related uses are permitted under the terms of the Lease, and considered as part of the Purpose as defined in Paragraph 2(a) of the Lease:

- 1) Outdoor dining;
- 2) Tenant business-related special events;
- 3) Festivals;
- 4) Markets;
- 5) Event watch parties;
- 6) Movie nights;
- 7) Live music;
- 8) Recreational events;
- 9) Vendor booths;
- 10) Charity events; and
- 11) Tented events for inclement/cold weather.

These uses are subject to the terms and conditions of the Lease, as well as all applicable laws, regulations, and other statutory permitted governmental oversight. For uses numbered 2 through 10, the Tenant shall complete and submit a City Special Events Application and Agreement to the City Development and Events Specialist at least thirty (30) calendar days in advance of any such use, not for approval, but for informational purposes only to allow for coordination of City resources, traffic control, and emergency management as applicable. The Tenant shall not be required to pay any Application Fees, but may be required to pay Location Fees and/or Service Fees, as defined in that Application, as applicable to each use.

