

**EXHIBIT C  
RIGHT OF ENTRY**

**CITY OF ANNAPOLIS RIGHT OF ENTRY AND WAIVER OF LIABILITY AGREEMENT**

**THIS RIGHT OF ENTRY AND WAIVER OF LIABILITY AGREEMENT** is made this 24<sup>th</sup> day of September, 2015 (the "Agreement"), by and between the CITY OF ANNAPOLIS, a municipal corporation of the State of Maryland ("City"), and O2 HOLDINGS, LLC, a Maryland limited liability company, trading as O2/LAFAYETTE (collectively, "O2/Lafayette").

**WHEREAS**, the City is the owner of property known and described as 9 St. Mary's Street, Annapolis, Maryland 21401 (the "Property"); and

**WHEREAS**, O2/Lafayette, its employees, contractors and subcontractors desire to enter the Property in order to conduct observations, examinations, investigations, explorations, tests, reports, studies, including environmental studies of the Property in connection with a potential purchase of the Property (collectively, the "Investigations"); and

**NOW, THEREFORE**, in consideration of the above recitals, and other good and valuable consideration, the parties hereto agree as follows:

**1. Right of Entry.**

a. Except as otherwise reserved herein, the City hereby grants unto O2/Lafayette, and its employees, contractors and subcontractors, and the latter hereby accepts a non-exclusive, revocable, temporary right of entry to enter upon the Property solely for the purpose of the Investigations and for no other purpose whatsoever (the "Right of Entry"), which Right of Entry shall expire two (2) years from the date of this Agreement (the "Term"). The Right of Entry shall occur at reasonable times and in a reasonable manner for the purpose of the Investigations.

b. **THE CITY DOES NOT SURRENDER NOR AGREE TO SURRENDER, ABSOLUTE CONTROL AND POSSESSION OVER ANY PORTION OF THE PROPERTY. THE PARTIES EXPRESSLY AGREE THAT THIS RIGHT OF ENTRY DOES NOT CONFER NOR PROVIDE A FEE, EASEMENT OR LEASEHOLD INTEREST OR REAL PROPERTY INTEREST OF ANY KIND IN THE PROPERTY TO O2/LAFAYETTE. THIS IS MERELY A REVOCABLE, NON-EXCLUSIVE RIGHT OF ENTRY FOR A PERMITTED USE.**

c. Prior to any Investigations of an invasive nature and/or which any Investigations that will or may alter, damage or otherwise change the Property, O2/Lafayette shall give the City a minimum of twenty-four (24) hours prior notice to the City Department of Public Works at (410) 263-7949.

d. O2/Lafayette shall perform all Investigations competently and in a manner using the standard methods and degree of skill and care of a reasonably competent entity in the same field or practice area under same or similar circumstances. All operations of O2/Lafayette, including, but not limited to the Investigations, shall be carried out in accordance with all applicable federal, state, local and City laws, regulations, ordinances and orders, including without limitation, any applicable permitting, notice or approval requirements.

e. In the event that O2/Lafayette stores, keeps, or leaves any materials equipment or other personal property on the Property, O2/Lafayette assumes full risk of loss or damage to any such materials, equipment, or personal property used or stored on the Property during the Term.

**2. Waiver of Liability and Indemnification.**

a. In consideration for the Right of Entry, O2/Lafayette hereby forever releases, waives, discharges, and covenants not to sue the City, its elected officials, appointees, directors, employees, agents, contractors and representatives, and forever waives its right to initiate, make or file any claim, cause of action, or legal proceeding whether now known or later discovered, ONLY to, any and all loss, liability, damage, claim, cost or expense incurred at the Property or arising out of or in connection with the Investigations or this Agreement, REGARDLESS OF WHETHER SUCH LOSS, LIABILITY, DAMAGE, CLAIM, COST OR EXPENSE IS CAUSED BY THE NEGLIGENCE OF THE CITY, or otherwise, and regardless of whether such liability arises in tort, contract, strict liability, or otherwise, to the fullest extent allowed by law

b. O2/Lafayette shall forever indemnify, defend and hold harmless the City, its elected officials, appointees, directors, employees, agents, contractors and representatives from and against all liability for injuries to persons, including death, and damage to City property and other property arising ONLY from acts or omissions of O2/Lafayette, its officers, agents, employees, contractors, subcontractors, patrons, volunteers, guests or invitees resulting in connection with the Investigations, the Property, and this Agreement. O2/Lafayette'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.

c. O2/Lafayette shall reimburse the City, within thirty (30) calendar days after invoicing for such reimbursement, for any damage to the City's buildings, facilities, equipment or property, including, but not limited to, the Property, caused by the negligence or willful misconduct of O2/Lafayette, its officers, agents, employees, contractors, subcontractors, patrons, volunteers, guests or invitees.

**3. City Rights.**

a. Expressly except during and throughout the entire seventy-five (75) day "Study Period" agreed to by the parties in a separate agreement of purchase and sale for the Property, the City may terminate this Agreement and the Right of Entry, with prior notice to O2/Lafayette, in whole or in part at any time and for any reason. O2/Lafayette acknowledges that the absence of a reciprocal right of termination for convenience does not render this Agreement or the Right of Entry illusory or unenforceable.

b. The City reserves the right at all times to exercise full municipal control and regulation with respect to all matters connected with this Agreement and the Right of Entry, including, but not limited to, the Property and the Investigations, not inconsistent with the terms of this Agreement.

**4. Miscellaneous.**

a. O2/Lafayette shall not assign, subcontract or transfer the rights it has or the obligations imposed on it by this Agreement or the Right of Entry.

b. Nothing contained in this Agreement shall be construed to constitute O2/Lafayette as an agent, representative or employee of the City. Nor shall anything contained in this Agreement be construed in any manner to create any relationship between O2/Lafayette and the City other than what is expressly specified herein.

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


d. In all actions arising from this Agreement, the laws of the State of Maryland shall govern.

**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first written above.


WITNESS:



O2 HOLDINGS, LLC trading as  
O2/LAFAYETTE

By:   
Name: James P. O'Hare (Seal)  
Title: member

ATTEST:

  
Regina C. Watkins-Eldridge, MMG,  
City Clerk

CITY OF ANNAPOLIS

By:   
Michael J. Pantelides, Mayor (Seal)

REVIEWED AND APPROVED BY:

  
Thomas C. Andrews, City Manager

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

  
OFFICE OF THE CITY ATTORNEY