

1 **..Title**

2 **Lease of 145 Gorman Street** – Amended and Restated Agreement of Lease between KDBA,
3 LLC and the City of Annapolis for the use of non-city-owned property by the City of Annapolis.

4 **..Body**

5
6 **CITY COUNCIL OF THE**
7 **City of Annapolis**

8
9 **Ordinance 22-15**

10
11 **Sponsored by: Mayor Pantelides**

12
13 **Referred to**

14 Economic Matters

15 Finance

16
17
18 **AN ORDINANCE** concerning

19
20 **Lease of 145 Gorman Street**

21
22 **FOR** the purpose of approving an Amended and Restated Agreement of Lease between
23 KDBA, LLC and the City of Annapolis for the use of non-city-owned property by the
24 City of Annapolis.

25
26 **WHEREAS,** KDBA, LLC is the tenant under a Lease dated as of July 1, 2002 by and between
27 Hopkins Furniture Company, Incorporated, as the Landlord, and the Landlord, as
28 tenant, as amended by the First Amendment to Lease dated as of October 18, 2004
29 and by the Second Amendment to Lease dated as of December 21, 2004 property
30 located at 145 Gorman Street, Annapolis, Maryland 21041, containing
31 approximately 0.24 acres, as described on Exhibit A attached to this Ordinance,
32 together with the existing 3-story building situated on the Land; and

33
34 **WHEREAS,** the Landlord and the Tenant entered into that Agreement of Lease dated March
35 2006, pursuant to which the Landlord leased to the Tenant the entire second and
36 third floors of the Building (all space within the exterior walls), together with the
37 first floor lobby and stairway areas providing access to such second and third floors
38 shown on the plan attached to this Ordinance as Exhibit B, and the underground
39 equipment room and stairway area beneath the Lobby, collectively containing
40 approximately twenty thousand three hundred seventy-two (20,372) square feet on
41 the terms and conditions of the Original Lease; and

42
43 **WHEREAS,** the Landlord and the Tenant mutually desire to modify the terms of the Original
44 Lease by amending and restating the Original Lease in accordance with the terms
45 set forth in the Amended and Restated Agreement of Lease between KDBA, LLC
46 and the City of Annapolis.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

SECTION I: AND BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the proposed Amended and Restated Agreement of Lease between KDBA, LLC and the City of Annapolis for the use of 145 Gorman Street, Annapolis, Maryland, a copy of which is attached hereto and made a part hereof, is hereby approved, and the Mayor is authorized to execute the Amended and Restated Agreement of Lease on behalf of the City of Annapolis.

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

EXPLANATION

CAPITAL LETTERS indicate matter added to existing law.
~~Strikethrough~~ indicates matter stricken from existing law.
Underlining indicates amendments

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

AMENDED AND RESTATED AGREEMENT OF LEASE

BY AND BETWEEN

KDBA, LLC, AS LANDLORD,

AND

CITY OF ANNAPOLIS, AS TENANT

TABLE OF CONTENTS

- [1. Demise of Premises.....](#) 1
- [2. Term.....](#) 1
- [3. Condition of Premises.....](#) 2
- [4. Permitted Use.....](#) 2
- [5. Rent.....](#) 3
- [6. Real Estate Taxes.....](#) 5
- [7. Insurance.....](#) 5
- [8. Utilities.....](#) 7
- [9. Repairs and Maintenance.....](#) 7
- [10. Alterations by the Tenant.....](#) 8
- [11. Mechanics’ and Materialmen’s Liens and Other Liens.....](#) 9
- [12. Representations of Tenant.....](#) 9
- [13. Subordination.....](#) 9
- [14. Release.....](#) 9
- [15. Inspection and Entry; Access to Lobby.....](#) 10
- [16. Tenant’s Failure to Perform.....](#) 10
- [17. Default.....](#) 10
- [18. Assignment and Subletting.....](#) 12
- [19. Fire or Other Casualty.....](#) 13
- [20. Eminent Domain.....](#) 14
- [21. Signs.....](#) 14
- [22. Notices.....](#) 14
- [23. Termination; Holding Over.....](#) 15
- [24. Estoppel Certificates.....](#) 16
- [25. Liability of the Landlord.....](#) 16
- [26. Quiet Enjoyment.....](#) 16
- [27. Commissions.....](#) 16
- [28. Recordation.....](#) 17
- [29. Intentionally Deleted.....](#) 17
- [30. Option to Extend.....](#) 17
- [31. Miscellaneous.....](#) 18

1 **AMENDED AND RESTATED AGREEMENT OF LEASE**

2 **THIS AMENDED AND RESTATED AGREEMENT OF LEASE** (this
3 “Lease”) is made as of the ____ day of _____, 2015 by and between **KDBA, LLC**, a
4 Maryland limited liability company (the “Landlord”), as Landlord, and **THE CITY OF**
5 **ANNAPOLIS**, a municipal corporation of the State of Maryland (the “Tenant”), as
6 tenant.

7
8 **RECITALS**

9 WHEREAS, the Landlord is the tenant under that certain Lease dated as of July
10 1, 2002 by and between Hopkins Furniture Company, Incorporated, as the Landlord, and
11 the Landlord, as tenant, as amended by the First Amendment to Lease dated as of
12 October 18, 2004 and by the Second Amendment to Lease dated as of December 21,
13 2004 (collectively, the “Ground Lease”) of all that parcel of land commonly known as
14 123 Main Street, Annapolis, Maryland 21401, with a mailing address of 145 Gorman
15 Street, Annapolis, Maryland 21041, containing approximately 0.24 acres, as more
16 particularly described on Exhibit A attached to this Lease (the “Land”), together with the
17 existing 3-story building situated on the Land (the “Building”) (the Land and the
18 Building are collectively referred to the “Property”); and

19 WHEREAS, the Landlord and the Tenant entered into that certain Agreement of
20 Lease dated March 2006, (the “Original Lease”), pursuant to which the Landlord leased
21 to the Tenant the entire second and third floors of the Building (all space within the
22 exterior walls), together with the first floor lobby and stairway areas providing access to
23 such second and third floors shown on the plan attached to this Lease as Exhibit B (the
24 “Lobby”), and the underground equipment room and stairway area beneath the Lobby,
25 collectively containing approximately twenty thousand three hundred seventy-two
26 (20,372) square feet (collectively, the “Premises”), on the terms and conditions of the
27 Original Lease; and

28 WHEREAS, the Landlord and the Tenant mutually desire to modify the terms of
29 the Original Lease by amending and restating the Original Lease in accordance with the
30 terms set forth below.

31
32 **AGREEMENT**

33 **NOW, THEREFORE**, in consideration of the foregoing and other good and
34 valuable consideration, the receipt and sufficiency of which are hereby acknowledged,
35 the parties agree to amend and restate the terms of the Original Lease in their entirety as
36 follows:

37 **1. Demise of Premises.**

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

1 **2. Term.**

2 This Lease shall be for a term (the “Term”) commencing on July 1, 2015 (the
3 “Effective Date”) and expiring on June 30, 2030, unless sooner terminated as otherwise
4 provided by this Lease and subject to extension as provided in Section 30.

5 **3. Condition of Premises.**

6 The Landlord shall have no further obligation to install or perform any
7 improvements to the Premises after the Effective Date. The Premises shall be delivered
8 to the Tenant in “AS IS” condition. The Tenant acknowledges that it has inspected the
9 Premises, and that the Tenant’s occupancy of the Premises shall constitute acceptance
10 thereof as complying with all obligations of the Landlord with respect to the condition,
11 order and repair thereof. The Tenant, at its sole cost and expense, shall perform any
12 additional work necessary to prepare the Premises for the Tenant’s use and occupancy as
13 provided by Section 10.

14 **4. Permitted Use.**

15 (a) The Tenant shall use and occupy the Premises in the performance of its
16 “essential governmental functions” and for any use permitted by applicable laws,
17 including but not limited to general office use, and for no other purposes. The Tenant
18 shall not use the Premises for any use, which, but for an exemption for the Tenant being a
19 governmental entity, is not otherwise permitted as of right.

20 (b) The Tenant shall not use the Premises in any manner which would violate any
21 zoning or use restrictions thereon or any applicable law, including but not limited to any
22 Environmental Regulations (defined in Section 4(d)) or which may constitute a nuisance
23 or a potential fire hazard, or contravene the provisions of the Property Insurance (defined
24 in Section 7(b)) or which may cause any increase in premiums on the Property Insurance.
25 The Landlord makes no representation as to the fitness of the Premises or satisfaction of
26 zoning requirements with regard to the Tenant’s proposed use of the Premises as
27 contemplated herein.

28 (c) The Tenant shall not commit or suffer to be committed any waste or nuisance
29 upon the Premises. The Tenant, at the Tenant’s sole cost and expense, shall comply with
30 and observe (i) all ordinances, rules, regulations and requirements of all municipal, state
31 and federal and other applicable governmental authorities hereafter in force pertaining to
32 the Premises and the use thereof, including but not limited to any Environmental
33 Regulations; and (ii) all requirements and rules and regulations of any applicable
34 insurance rating agency.

35 (d) The Tenant shall not use, generate, place, store, release, discharge, transport
36 or otherwise dispose of Hazardous Substances in, on or under the Premises except in
37 strict accordance with environmental, federal, state or local laws and regulations
38 concerning the environment (“Environmental Regulations”). If the Tenant breaches the
39 foregoing, the Tenant shall give the Landlord Notice (as defined in Section 22) of such
40 breach and at the Landlord’s option, the Landlord (at the Tenant’s expense) or the Tenant
41 shall immediately undertake remedial action in accordance with Environmental
42 Regulations. The Tenant shall indemnify, defend and hold the Landlord harmless from

1 and against, and shall reimburse the Landlord for, all claims, demands, causes of action,
2 losses, damages, liabilities, costs and expenses (including reasonable attorney's,
3 consultant's and expert's fees) asserted against or incurred by the Landlord arising out of
4 the Tenant's breach of any warranty or representation or failure to comply with or
5 perform any covenant, agreement or obligation set forth in this Section 4(d). The Tenant,
6 in handling any defense pursuant to this Section 4(d) may select its own attorneys,
7 including the City Attorney. The term "Hazardous Substance", as used in this Lease,
8 shall mean any product, equipment, underground storage tank, material, waste or
9 substance (i) which requires special handling, investigation, removal, transportation,
10 closure, notification or other remedial action under any Environmental Regulation, (ii)
11 which is or becomes defined as a hazardous waste, hazardous material, hazardous
12 substance, pollutant, toxic substance or contaminant under any Environmental
13 Regulation, (iii) which is or becomes regulated or governed by any Environmental
14 Regulation or by any governmental authority, agency, department, commission, board or
15 instrumentality of any governmental entity, or (iv) which causes or threatens to cause an
16 erosion, contamination, drainage or nuisance problem on the Premises or to adjacent
17 property, public roads or rights of way or which poses or threatens to pose a hazard to the
18 health or safety of persons on or about the Premises or adjacent property. The provisions
19 of this Section 4(d) shall survive the expiration or earlier termination of this Lease.

20 (e) The Tenant acknowledges that the Premises and the Property are subject to
21 the Ground Lease. During the Term, the Tenant shall promptly observe and comply with
22 the Ground Lease with respect to the Tenant's use and occupancy of the Premises. The
23 Tenant is cognizant of the terms and provisions of the Ground Lease and agrees to be
24 bound by them.

25 **5. Rent.**

26 (a) Commencing on the Effective Date and continuing through June 30, 2016, the
27 Tenant shall pay to the Landlord "Basic Rent" in the amount of Three Hundred Seventy
28 Eight Thousand Three Hundred Eight and 04/100 Dollars (\$378,308.04), payable in equal
29 monthly installments of Thirty One Thousand Five Hundred Twenty Five and 67/100
30 Dollars (\$31,525.67). Basic Rent shall increase three percent (3%) per annum
31 commencing on July 1, 2016 and on every July 1 thereafter.

32 (b) Basic Rent shall be payable in monthly installments without demand,
33 deduction, recoupment or set-off, in advance on the first day of each and every month.

34 (c) As used in this Lease, "Additional Rent" shall mean all amounts, costs and
35 expenses other than Basic Rent which the Tenant assumes or agrees to pay to the
36 Landlord as provided by this Lease. In the event of nonpayment of any amount of
37 Additional Rent, the Landlord shall have all of the rights and remedies provided for in the
38 case of nonpayment of Basic Rent. The Tenant shall pay Additional Rent at such time or
39 times as provided in this Lease or, if not otherwise provided, on the first day of each and
40 every month commencing on the Effective Date, and the Tenant's obligation to pay
41 Additional Rent shall survive the expiration or termination of this Lease. Basic Rent and
42 Additional Rent are referred to collectively in this Lease as "Rent."

43 (d) All payments or installments of Rent hereunder (including attorneys' fees)
44 shall be paid to the Landlord at the address designated for Notices to the Landlord herein,

1 or as otherwise designated by the Landlord. Time is of the essence with respect to the
2 Tenant's obligations to pay Rent. Any payment by the Tenant or acceptance by the
3 Landlord of a lesser amount than is due from the Tenant to the Landlord shall be treated
4 as a payment on account. The acceptance by the Landlord of a check for a lesser amount
5 with an endorsement or statement, or upon any letter accompanying such check, that such
6 lesser amount is payment in full, shall be given no effect, and the Landlord may accept
7 such check without prejudice to any other right or remedy which the Landlord may have
8 against the Tenant, unless otherwise agreed in writing by both parties.

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

17 (f) As used in this Lease, "Tenant's Share" means sixty-nine and twelve one-
18 hundredths percent (69.12%) multiplied by the amount of Common Expenses or such
19 other amount for which Tenant is responsible based on the Tenant's Share. As used in
20 this Lease, "Common Expenses" shall mean all costs of the operation, management,
21 maintenance, repair and Capital Repair (as defined in Section 9 below) of the Property
22 incurred by the Landlord or the Landlord's managing agent, including but not limited to
23 the costs of the Property Insurance, the Real Estate Taxes (defined in Section 6(a)) and a
24 commercially reasonable management fee. Prior to the Option Closing Date, the cost of
25 any Capital Repairs shall be amortized over the useful economic life of the improvement
26 constituting a Capital Repair and after the Option Closing Date, such cost shall be a
27 Common Expense as and when paid or incurred. Commencing on the Effective Date and
28 thereafter for the remainder of the Term, the Tenant shall pay to the Landlord, as
29 Additional Rent, the Tenant's Share of Common Expenses within thirty (30) days after
30 the Landlord gives the Tenant Notice of the amount and calculation of the Tenant's Share
31 thereof. The Tenant shall pay to the Landlord, as Additional Rent, on the Effective Date,
32 and thereafter, with and at the same time as the monthly installments of Basic Rent, Five
33 Thousand Three Hundred Ten Dollars (\$5,310.00) per month as the initial estimated
34 amount of the Tenant's Share of Common Expenses. Thereafter:

35 (i) From time to time during the Term, but not more frequently than once
36 each fiscal year (i.e., July 1 through June 30), the Landlord may revise its estimate of the
37 Tenant's Share of Common Expenses as set forth above and adjust the Tenant's monthly
38 installments thereof to reflect such revised estimates. The Landlord will give the Tenant
39 Notice of the revised estimates and the amount by which the Tenant's monthly
40 installments will be adjusted, and the Tenant shall pay the adjusted installments with each
41 monthly installment of Basic Rent, beginning with the first payment of the Basic Rent to
42 come due after the Tenant's receipt of such prior Notice;

43 (ii) The Landlord shall deliver to the Tenant, within ninety (90) days after
44 the end of each fiscal year during the Term, a statement for such year (the "Common

1 Expense Statement”), calculating the actual amount of the Tenant’s Share of the
2 Common Expenses. The final Common Expense Statement under the Original Lease
3 shall be for the period January 1, 2014 through June 30, 2015. If the actual amount of the
4 Tenant’s Share of such Common Expenses is more than the amounts paid by the Tenant
5 during such year as monthly installments of the estimated the Tenant’s Share of Common
6 Expenses, then the Tenant shall pay to the Landlord, within thirty (30) days after receipt
7 of the Common Expense Statement, the amount of such shortfall. If the actual amount of
8 the Tenant’s Share of such Common Expenses is less than the amounts paid by the
9 Tenant as installments of the estimated the Tenant’s Share of such Common Expenses,
10 then the Landlord will credit Tenant’s account by the amount of the excess or, if at the
11 end of the Term, refund to the Tenant the amount of the excess; and

12 (iii) Failure of the Landlord to provide any Common Expense Statement
13 within the time prescribed will not relieve the Tenant of its obligations under this Section
14 5(f).

15 (g) All Rent payable and all statements deliverable by the Tenant to the Landlord
16 under this Lease shall be paid and delivered to the office of the Landlord as herein set
17 forth for Notices, or any other address which the Landlord may hereafter designate in a
18 Notice to the Tenant.

19 **6. Real Estate Taxes.**

20 (a) As used in this Lease “Real Estate Taxes” means (i) all real estate taxes,
21 including general and special assessments, if any, which are imposed upon the Landlord
22 or assessed against the Property during any fiscal tax year, and (ii) any other present or
23 future taxes or governmental charges that are imposed upon the Landlord or assessed
24 against the Property during any fiscal tax year, which are in the nature of, in addition to
25 or in substitution for real estate taxes, including, without limitation, any license fees, tax
26 measured by or imposed upon rents, or other tax or charge upon the Landlord’s business
27 of leasing the Premises, but shall not include any federal, state or local income tax. Any
28 reasonable expense incurred by the Landlord (including contingent or percentage
29 attorneys’ fees) in contesting any increase in Real Estate Taxes shall be included as an
30 item of Real Estate Taxes for the purpose of computing Additional Rent due the
31 Landlord. The Landlord, however, shall have no obligation to contest any increase in
32 Real Estate Taxes.

33 (b) If some method or type of taxation shall replace the current method of
34 assessment of Real Estate Taxes, or the type thereof, the Tenant agrees that the Tenant
35 shall pay an equitable share of the same computed in the fashion consistent with the
36 method of computation provided in this Section 6 to the end that the Tenant’s cost on
37 account thereof shall be, to the maximum extent possible, the same as the Tenant would
38 bear under the foregoing provisions of this Section 6.

39 **7. Insurance.**

40 (a) At all times during the Term, at the Tenant’s sole cost and expense, the
41 Tenant shall obtain and keep in full force and effect a policy of comprehensive general
42 public liability insurance on an “occurrence” basis, naming the Landlord, the Landlord’s
43 managing agent and the Landlord’s mortgagee as insureds, as their interests may appear,

1 with respect to the Premises and the business of the Tenant in, on, within, from or
2 connected with the Premises, for which the limits of liability shall be not less than Three
3 Million Dollars (\$3,000,000.00) with respect to injuries and/or death to any number of
4 persons arising out of one accident; One Million Dollars (\$1,000,000.00) with respect to
5 injury and/or death of any one person; and in the amount of not less than Five Hundred
6 Thousand Dollars (\$500,000.00) with respect to the destruction of or damage to property.
7 Such insurance policy shall be issued by an insurance company approved by the
8 Landlord. Even though the Landlord and its mortgagee are named insureds on the policy
9 provided by the Tenant, such policy must specifically provide for payment of damage or
10 loss to the Landlord when the damage to the Landlord, to its property or to its agents,
11 contractors or employees is caused by the negligent act of the Tenant or its contractors,
12 employees, agents, licensees or invitees. At the Landlord's request, made no more
13 frequently than each fifth (5th) anniversary of the Effective Date, Tenant shall increase
14 the amounts of coverages required by this Section 7(a) to amounts carried on comparable
15 properties in the Annapolis, Maryland area and reasonably satisfactory to the Landlord.

16 (b) At all times during the Term, the Landlord shall keep the Building and all
17 other improvements to the Property (except the contents of the Premises) insured against
18 loss due to fire and other property risks included in standard all risk coverage insurance
19 policies, and covering loss of income from such property risk, in an amount equal to one
20 hundred percent (100%) of the replacement value thereof (the "Property Insurance").

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

29 (d) At all times during the Term, the Tenant shall also maintain, at the Tenant's
30 sole cost and expense, worker's compensation insurance in statutory limits.

31 (e) The Tenant hereby waives all claims for recovery from the Landlord for any
32 loss or damage insured under valid and collectible insurance policies to the extent of any
33 recovery for loss insured thereunder. The policy required to be kept in force by the
34 Tenant as provided by Section 7(a) shall contain provisions whereby the insurer waives
35 any right of subrogation against the Landlord and its contractors, agents and employees.
36 Neither the issuance of such policy or the minimum limits of coverage specified in
37 Section 7(a) or elsewhere in this Lease shall limit or restrict, or be deemed to limit or
38 restrict in any way, the Tenant's responsibility or liability arising out of its covenants
39 under the provisions of this Lease. The insurance protection afforded by the Tenant's
40 insurance policy must be written as primary coverage and not as contributing with or in
41 excess of any coverage which the Landlord may carry.

42 (f) Before the Tenant occupies the Premises, the Tenant shall deliver to the
43 Landlord one or more original certificates of Tenant's insurance policies required to be
44 maintained by this Section 7, together with true and complete copies of such policies and

1 of receipts or other evidences of the pre-payment of its premiums for not less than one (1)
2 year in advance. Thereafter, during the entire Lease Term, and at least thirty (30) days
3 before each expiration date of each such policy, the Tenant will similarly deliver an
4 original certificate of the renewal policy to the Landlord together with true and complete
5 copies of the renewal policies and of receipts or other evidence of the prepayment of the
6 annual premiums. Each certificate of the Tenant's insurance policies must be reasonably
7 acceptable to the Landlord in form, substance and detail and contain an agreement by the
8 insurer that it will not cancel or amend the policy without giving at least thirty (30) days
9 prior written notice to the Landlord.

10 (g) The insurance required to be maintained by the Tenant by this Section 7 may
11 be placed under one or more "blanket policies;" provided, however, that the insurer
12 named in each such blanket policy must certify to the Landlord's satisfaction that the
13 coverage required to be provided by the Tenant is separately identified and is actually
14 provided and available to protect the Premises within the terms of the blanket policy.

15 (h) So long as the Tenant is a municipal corporation of the State of Maryland, if
16 the Tenant maintains a self-insurance program for substantially all of its properties and
17 activities and if approved or permitted by all lenders with respect to the Property, then
18 those coverages required to be maintained by the Tenant hereunder may be maintained
19 under a self-insurance program sponsored by the Tenant and not under commercial
20 insurance policies.

21 **8. Utilities.**

22 The Tenant shall be solely liable to pay all costs and expenses of electricity,
23 water, sanitary sewer, heating, natural gas, air conditioning, telephone, internet access
24 and any other utility service used at the Premises, and for exterior lighting of the
25 Building. Tenant shall pay all such costs and expenses either directly to the providers of
26 such services if the Building is separately metered therefor or, if not separately metered,
27 to the Landlord, based on the Landlord's reasonable proration of such costs and
28 expenses, within thirty (30) days after the Landlord gives Tenant a statement therefor
29 with supporting documentation. Under no circumstances shall the Landlord be liable to
30 Tenant in damages or otherwise (i) if any utility shall become unavailable from any
31 public utility company, public authority or any other person or entity supplying or
32 distributing such utility, or (ii) for any interruption in service of electricity, water, sewer,
33 gas, heat, ventilation, telephone or air conditioning caused by fire, accidents, strikes,
34 breakdowns, necessary maintenance, alterations, repairs, acts of God or any other causes;
35 and, except as permitted by Section 19, the foregoing shall not constitute a termination of
36 this Lease or an actual or constructive eviction and shall not entitle Tenant to terminate
37 this Lease or to an abatement of Rent.

38 **9. Repairs and Maintenance.**

39 (a) Tenant, at its sole cost and expense, shall maintain and keep, in a first class
40 condition, the entire interior of the Premises, including but not limited to all windows,
41 doors and glass, the Lobby elevator, all machinery, equipment, lighting, sump pumps,
42 controls, oil minder pump, emergency chair lift, mechanical, electrical, plumbing,
43 heating, ventilating, air conditioning, space heaters, sprinkler, fire suppression and alarm

1 systems and equipment, inventory and appurtenances thereof used by or for the benefit of
2 Tenant, and shall keep the Premises in good order and repair, and in a safe and clean
3 condition, free of dirt, trash, pests, and in all respects in such manner as to comply with
4 all applicable laws and regulations. Tenant shall also maintain and keep, in a first class
5 condition, the sidewalks and landscaped areas (including but not limited to watering,
6 weeding, mulching and general maintenance) on the Property, and shall arrange for
7 removal of ice and snow from the sidewalks when reasonably necessary. From and after
8 the Option Closing Date, Tenant, at its sole cost and expense, shall repair, replace and
9 renew, as reasonably required, all of the foregoing items described in this paragraph (a).

10 (b) At Tenant's sole cost and expense, Tenant shall enter into and maintain
11 during the entire Term service contracts with reputable third-party contractors licensed to
12 maintain and monitor all mechanical, electrical, plumbing, sprinkler, fire suppression,
13 alarm and other systems and equipment at the Premises for which Tenant is responsible
14 as provided by Section 9(a), including but not limited to building operating systems and
15 equipment, as described in Section 9(a) and the elevator in the Lobby and all pumps and
16 other equipment in the underground equipment room beneath the Lobby. All such
17 service contracts and contractors must (i) comply with all applicable manufacturer's
18 recommendations, (ii) be terminable without penalty upon thirty (30) days prior written
19 notice, and (iii) be approved by the Landlord prior to Tenant entering into the service
20 contracts, which approval shall not be unreasonably withheld. From and after the Option
21 Closing Date, Tenant, at its sole cost and expense, shall repair, replace and renew, as
22 reasonably required, all of the foregoing systems, property, plant and equipment.

23 (c) The Landlord shall maintain, repair, replace and renew the roof, foundation
24 and exterior walls of the Building, as and when reasonably required, and make all other
25 capital improvements to the Property for which the Tenant is not responsible to make
26 pursuant to Section 9(a) and (b) above ("Capital Repairs"), provided that the Tenant
27 promptly shall give the Landlord Notice of the necessity for such repairs, and further
28 provided that the damage thereto shall not have been caused by the Tenant, its agents,
29 contractors, invitees or employees, in which event the Tenant shall be responsible
30 therefore and shall promptly repair such damage at its sole cost and expense. The costs
31 and expenses of Capital Repairs shall be Common Expenses. If the cost of a Capital
32 Repair is payable by any other tenant of the Property (other than such tenant's share),
33 then such cost shall not be a Common Expense to the extent so payable.

34 (d) Except as provided by Section 9(c), the Landlord shall have no obligation or
35 liability for repair or maintenance of the Premises, or any part thereof, nor shall the
36 Landlord be under any liability to repair, maintain or replace any electrical, plumbing,
37 heating, air conditioning or other mechanical installation, nor shall the Landlord be
38 obligated to make any improvements of any kind upon the Premises, or to make any
39 repairs, replacements or improvements to any equipment, facilities or fixtures contained
40 therein, all of which shall be the responsibility of the Tenant and shall be performed as
41 provided by Section 10.

42 (e) It is the intention of the parties that after the Option Closing Date, the Tenant
43 shall be absolutely and fully responsible for all costs, expenses and expenditures of all
44 kinds, types and matters relating to the Premises and for the Tenant's Share of all costs,

1 expenses and expenditures of all kinds, types and matters relating to the remainder of the
2 Property, as if the Tenant were the fee owner thereof.

3 **10. Alterations by the Tenant.**

4 (a) The Tenant shall not make any alterations or improvements to the Premises
5 during the Term, unless such alterations (i) are not structural in nature and do not affect
6 the structural integrity of the Building, (ii) are not visible from the exterior of the
7 Building, (iii) do not adversely affect the qualification of the Building as an historic
8 structure or the historic tax credits available to the Landlord in connection therewith, and
9 (iv) are performed after written approval by the Landlord of the Tenant's specific plans
10 and specifications therefor, which approval shall not be unreasonably withheld. All
11 alterations and improvements to the Premises shall be done at the sole cost and expense
12 of Tenant in a good and workmanlike manner, using only new materials and in
13 compliance with all applicable laws, codes, rules and regulations. Such alterations and
14 improvements shall, upon the installation thereof, become and be the property of the
15 Landlord and shall remain upon and be surrendered with the Premises at the termination
16 or expiration of this Lease.

17 (b) The Tenant shall cause all debris, rubbish and surplus materials caused by the
18 performance of its alterations and improvements to be removed from the Premises and
19 disposed of at a lawful facility as necessary or when directed by the Landlord, but not
20 less frequently than every two (2) days.

21 **11. Mechanics' and Materialmen's Liens and Other Liens.**

22 The Tenant shall not do or suffer to be done any act, matter or thing whereby the
23 Premises (or Tenant's interest therein), or any part thereof, may be encumbered by any
24 mechanics' or materialmen's lien or by any other lien or encumbrance. The Tenant shall
25 cause to be canceled and discharged of record, by bond approved by the court or as
26 otherwise permitted by such court in which the claim is filed, within ten (10) business
27 days after the date of filing, any mechanics' or materialmen's liens filed against the
28 Premises (or Tenant's interest therein), or any part thereof, purporting to be for work or
29 material furnished or to be furnished to the Tenant. The Tenant shall have no authority to
30 encumber the Landlord's interest in the Building or the Premises, and nothing in this
31 Lease shall be deemed or construed to make the Tenant the agent of the Landlord for the
32 purpose of performing work in or upon, or ordering materials for, the Building or the
33 Premises.

34 **12. Representations of Tenant.**

35 The Tenant hereby represents and warrants to the Landlord that as of the Effective
36 Date, the Tenant is a municipal corporation of the State of Maryland; this Lease
37 constitutes the legal, valid and binding obligation of the Tenant enforceable in
38 accordance with its terms; the Tenant has full power and authority to enter into and
39 perform the terms and conditions of this Lease; the Tenant has obtained all necessary
40 approvals and consents to lease the Premises from the Landlord as contemplated by this
41 Lease; the persons executing this Lease on behalf of the Tenant is fully and duly
42 empowered and authorized to so act and this Lease has been duly executed and delivered.

1 **13. Subordination.**

2 The Tenant accepts this Lease, and the tenancy created hereunder, subject and
3 subordinate to the Ground Lease and any security interests, mortgages, deeds of trust or
4 other financing arrangements now or hereafter encumbering the Landlord's interest in
5 the Building or any part or parts thereof and to any extensions, modifications or
6 amendments thereof. The Tenant shall, at any time hereafter, on request, execute any
7 instruments which may be required to subordinate, or render prior, the Tenant's interest
8 hereunder to such lien and the failure of the Tenant to execute any such instruments shall
9 constitute a default hereunder.

10 **14. Release.**

11 The Tenant hereby waives, releases and irrevocably relinquishes any and all
12 claims, liability and causes of action, known or unknown, against the Landlord or the
13 Landlord's contractors, employees, agents, licensees or invitees arising during the Term
14 in connection with any damage or destruction to the property of the Tenant or of any
15 other person or entity and/or for injury or death to the person of the Tenant or of any
16 other person or entity directly or indirectly due to any cause whatsoever other than the
17 willful misconduct or gross negligence of the Landlord or of the Landlord's contractors,
18 employees, agents, licensees or invitees.

19 **15. Inspection and Entry; Access to Lobby.**

20 (a) the Landlord or its agents shall have, upon giving the Tenant at least twenty-
21 four (24) hours advance Notice (which Notice, in addition to the means set forth in
22 Section 22, may be given by telephone or orally in person) the right at all reasonable
23 times to enter the Premises to examine same and to show them, and for such other
24 purposes as shall be necessary in the reasonable exercise of the discretion of the
25 Landlord. The Landlord shall not be required to give any Notice to the Tenant before
26 entering the Premises in the event of an emergency. In addition, if the Tenant shall fail to
27 make any repairs, restorations, replacements or otherwise comply with the provisions of
28 this Lease within the time specified in Section 16, then the Landlord shall have the right,
29 but shall not be required to enter the Premises during normal business hours (or otherwise
30 in the event of an emergency) to make required repairs, restorations, replacements or
31 fulfill the other requirements hereunder and in the event the Landlord does so act, such
32 repairs, restorations, replacements or fulfillment of other requirements shall be made by
33 the Landlord at the sole cost and expense of the Tenant, and any costs or expenses
34 incurred by the Landlord shall be collectible as Additional Rent and shall be paid by the
35 Tenant to the Landlord within ten (10) business days after the Landlord delivers to the
36 Tenant a statement therefor with appropriate documentation including third party
37 invoices and receipts. The Tenant shall not change any locks or passwords necessary to
38 access the Building or the Premises without first providing the Landlord with such new
39 keys or passwords as are necessary for the Landlord to obtain such access.

40 (b) The Tenant acknowledges that the Landlord's tenant on the first floor of the
41 Building requires emergency access to the Lobby and rear exit stairway, and the Tenant
42 shall not block or lock the existing fire exit from such tenant's leased premises to the
43 Lobby.

1 **16. Tenant's Failure to Perform.**

2 If the Tenant shall fail, within fifteen (15) business days after the Landlord gives
3 the Tenant Notice thereof, to keep the Premises in the state of condition and repair
4 required by this Lease; to do any act; make any payment; or perform any term or
5 covenant on the Tenant's part required under this Lease, the Landlord may (at its option,
6 but without being required to do so) immediately, or at any time thereafter and without
7 Notice, perform the same for the account of the Tenant (including, but not limited to,
8 entering upon the Premises at any time to make repairs). Any costs incurred by the
9 Landlord in so performing the Tenant's obligations shall be deemed Additional Rent.
10 Landlord shall provide to Tenant reasonable evidence of the costs Landlord incurred. All
11 rights given to the Landlord in this Section 16 shall be in addition to any other right or
12 remedy of the Landlord herein contained.

13 **17. Default.**

14 (a) (i) If the Tenant shall fail to pay any installment of Rent within five (5)
15 days after the date such installment is due, or (ii) if the Tenant defaults in any of the
16 covenants or agreements herein contained and not otherwise specifically provided for by
17 this Section 17(a), which default shall not be cured within fifteen (15) days after the
18 Landlord gives the Tenant Notice thereof, or (iii) if the Tenant's leasehold estate shall be
19 taken in execution, or (iv) if the Tenant shall be declared bankrupt or insolvent according
20 to law, or shall make an assignment for the benefit of creditors, or if any petition shall be
21 filed by or against the Tenant under any of the provisions of the Federal Bankruptcy Act
22 and shall not be vacated within ninety (90) days thereafter, or (v) if the Tenant vacates or
23 abandons the Premises (Items (i) through (v) are each referred to as an "Event of
24 Default"), then the Landlord may lawfully, immediately or at any time thereafter and
25 without Notice or demand, and without liability for any damage that may be done to the
26 property of the Tenant, enter into and upon the Premises and repossess the same and
27 declare this Lease and the tenancy hereby created terminated, and expel the Tenant and
28 those claiming under the Tenant, and the Landlord shall be entitled to the benefit of all
29 provisions of the laws of Anne Arundel County and the Public General Laws of
30 Maryland respecting the speedy recovery of lands and tenements held over by tenants or
31 proceedings in forcible entry and detainer, and all without prejudice to any remedies
32 which might otherwise be used by the Landlord for arrears of Rent or for any breach of
33 the Tenant's covenants herein contained. The Tenant further agrees that notwithstanding
34 such re-entry, the Tenant shall remain liable for any Rent or damages which may be due
35 or sustained prior thereto, and the Tenant shall further be liable, at the option of the
36 Landlord, for sums of money as liquidated damages for the breach of any covenant and
37 for all Rent due during the remainder of the Term. As an alternative, the Landlord may
38 collect in a lump sum the balance of Rent (including Additional Rent) which would be
39 due during the remainder of the Term had the Tenant not defaulted hereunder, which
40 lump sum shall be appropriately discounted to present value using then prevailing market
41 rates of interest. If the Landlord relets the Premises to another tenant after an Event of
42 Default, any amounts (net of the costs of such reletting) received from such subsequent
43 tenant during the Term shall reduce Tenant's damages due to the Landlord hereunder.
44 THE LANDLORD AND THE TENANT AGREE TO AND THEY HEREBY DO
45 WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM

1 BROUGHT BY ANY OF THE PARTIES HERETO AGAINST THE OTHERS ON
2 ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY
3 CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF THE LANDLORD
4 AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES AND/OR
5 ANY CLAIM OR INJURY OR DAMAGE, AND ANY STATUTORY REMEDY.

6 (b) No assent, expressed or implied, by the Landlord to any breach by the Tenant
7 of any of the clauses, stipulations or covenants of this Lease shall be deemed or taken to
8 be a waiver of, or assent to, any succeeding breach of the same clause, or stipulation or
9 covenant, or any preceding or succeeding breach of any clause, stipulation or covenants.
10 The Tenant hereby waives all rights of redemption to which the Tenant or any person
11 under it may be entitled by any law now or hereafter in effect.

12 (c) Upon the occurrence of an Event of Default, the Landlord shall have at all
13 times the right to distrain for Rent and other charges due and shall have a first and valid
14 lien upon all property of the Tenant, whether or not exempt by law, for payment of the
15 Rent and other charges herein reserved.

16 (d) All remedies granted hereunder or permitted by law shall be cumulative, and
17 unless inconsistent, may be exercised separately or concurrently or successively.

18 (e) From and after the occurrence of any Event of Default, the Tenant shall pay to
19 the Landlord as Additional Rent, and the Landlord shall be entitled to collect from the
20 Tenant, all fees, costs and expenses (including but not limited to the fees and
21 disbursements of the Landlord's attorneys) incurred by the Landlord in connection with
22 such Event of Default.

23 (f) The Landlord and the Tenant agree that this is a lease of property to be used
24 exclusively for a business, commercial or mercantile purpose as distinguished from
25 residence purposes as provided in Real Property Article, Section 8-110 of the Annotated
26 Code of Maryland and that this Lease and the Rent herein reserved are not subject to
27 redemption.

28 **18. Assignment and Subletting.**

29 (a) Except as provided in paragraph (b) below, the Tenant shall not assign this
30 Lease, or sublet the Premises or any portion thereof, without first obtaining in each such
31 instance prior written consent of the Landlord, which consent may be granted or withheld
32 in the Landlord's sole and absolute subjective discretion.

33 (b) So long as the Tenant is the City of Annapolis, the Tenant may sublease the
34 Premises for a term, including renewal terms of not more than five (5) years and may
35 assign its interest in this Lease, subject to the Landlord's right of first offer, as described
36 in paragraph (e) below.

37 (c) In case of any subletting or assignment, whether with or without the
38 Landlord's consent, the Tenant shall remain fully liable under this Lease. The Tenant
39 shall reimburse the Landlord for all reasonable legal costs incurred by the Landlord in
40 connection with the Landlord's review of documents concerning an assignment of this
41 Lease or a sublease of the Premises, whether or not the Landlord consents to such
42 assignment or sublease. If the amount of rent and other sums received by the Tenant

1 under any assignment of this Lease or sublease of the Premises is more than the Rent due
2 from the Tenant under this Lease, then the Tenant shall pay the full amount of such
3 excess to the Landlord on a monthly basis and promptly upon the Tenant's receipt of
4 such excess amounts. Consent in any one instance by the Landlord shall not be deemed a
5 waiver of the requirement that the Landlord's consent be obtained as to all subsequent
6 assignments and subleases.

7 (d) Any assignment or sublease in violation of this Lease shall be null and void
8 and the Landlord shall not be obligated to recognize the assignee or sublessee claims
9 unless the Landlord agrees otherwise in writing.

10 (e) The Tenant shall give Notice to the Landlord of its desire to assign this Lease,
11 the proposed consideration, outside date for closing, and any financing being offered or
12 arranged by the Tenant, if any (the "Offer Terms"). The Landlord shall then give a
13 Notice to the Tenant indicating whether it is interested in acquiring the Tenant's interest
14 in this Lease within ten (10) business days after receipt of the Tenant's notice of desire to
15 assign. If the Landlord declines or fails to accept the Offer Terms within the initial ten
16 (10) business day period, the Tenant may then proceed to seek a buyer and the Tenant
17 shall not be required to offer its interest to the Landlord, so long as the assignment is
18 consummated within eighteen (18) months from the Tenant's first Notice to the Landlord,
19 provided that the consideration is not less than ninety-five percent (95%) of the
20 consideration contained in the Offer Terms and the other terms are not materially more
21 favorable to the buyer. If the Landlord accepts the Offer terms, the Landlord shall
22 transfer, with its acceptance, ten percent (10%) of the consideration stated in the Offer
23 Terms to an escrow account or title company selected by the Landlord and reasonably
24 acceptable to the Tenant, within thirty (30) days, to be held as a deposit for such purchase
25 (the "Deposit") and closing shall occur at the time and upon the terms and conditions set
26 forth in the Offer Terms.

27 **19. Fire or Other Casualty.**

28 (a) In the event of partial or total damage or destruction insured against by the
29 Landlord to the Premises by fire, other casualty, or any other cause whatsoever (except
30 condemnation), (a) the Tenant promptly shall give Notice thereof to the Landlord; (b) this
31 Lease shall continue in full force and effect, except as otherwise provided by this Section
32 19; and (c) the Landlord, to the extent that insurance proceeds respecting such damage or
33 destruction are available to the Landlord therefor, shall thereupon cause such damage or
34 destruction to property owned by the Landlord to be repaired with reasonable speed at the
35 expense of the Landlord, due allowance being made for reasonable delay which may arise
36 by reason of adjustment of loss under insurance policies on the part of the Landlord or the
37 Tenant, and for reasonable delay on account of "labor troubles" or any other cause
38 beyond the Landlord's control, and to the extent that the Premises, in whole or in part, is
39 rendered untenable, the Rent shall proportionately abate. If the damage or destruction
40 shall be so extensive to the Building as to render it uneconomical, in the Landlord's
41 reasonable opinion, to restore the Premises for the use of the Tenant as specified herein or
42 the Landlord shall decide not to repair or rebuild the Building, this Lease, at the option of
43 either party, shall be terminated upon Notice thereof to the other party and the Rent shall,
44 in such event, be paid to or adjusted as of the date of such damage, and this Lease shall

1 terminate upon the third day after such Notice is given. The Tenant shall thereupon
2 vacate the Premises and surrender the same to the Landlord, but no such termination shall
3 release the Tenant from any liability to the Landlord arising from such damage or from
4 any of the obligations or duties imposed on the Tenant hereunder prior to such
5 termination.

6 (b) In no event shall the Landlord be liable for interruption to the Tenant's
7 business or for damage to or replacement or repair of the Tenant's personal property,
8 including inventory, trade fixtures, floor coverings, furniture and other property
9 removable by the Tenant under the provisions of this Lease, unless such interruption or
10 damage is caused by the gross negligence or willful misconduct of the Landlord or the
11 Landlord's contractors, employees, agents, licensees or invitees.

12 (c) If the Landlord shall terminate this Lease pursuant to paragraph (a) above
13 after the Option Closing Date, then the Tenant shall be entitled to a portion of the net
14 property insurance proceeds paid to the Landlord as a result of the loss or damage to the
15 Property from fire or other casualty equal to the Tenant's Share, multiplied by a fraction,
16 not greater than one, the numerator of which is the number of years remaining in the
17 Term and the denominator of which is equal to 40 and the Landlord shall be entitled to
18 the balance. For example, if the insurance proceeds are \$10,000,000 and the termination
19 occurs with 30 years remaining in the Term, then the Tenant shall be entitled to
20 \$5,184,000, or (\$10,000,000) times (69.12%) times (30/40).

21 (d) If the Premises are (i) damaged as a result of any cause which is not covered
22 under the Landlord's insurance coverage, or (ii) substantially damaged, in the Landlord's
23 reasonable opinion, during the last two (2) years of the Term, then in any such events and
24 notwithstanding paragraph (c) above, the Landlord may terminate this Lease by giving
25 the Tenant Notice thereof within ninety (90) days after the occurrence of such event.
26 Rent and other charges shall be adjusted as of the date of such damage.

27 **20. Eminent Domain.**

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

1 **21. Signs.**

2 (a) Except as permitted in Section 21(b), the Tenant covenants and agrees that it
3 shall not inscribe, affix, or otherwise display signs, advertisements or notices in, on, upon
4 or behind any windows or on any door, partition or other part of the interior or exterior of
5 the Building without the prior written consent of the Landlord. If such consent be given
6 by the Landlord, any such sign, advertisement, or notice shall be inscribed, painted or
7 affixed by the Landlord, or a company approved by the Landlord, but the cost of the same
8 shall be charged to and be paid by the Tenant, and the Tenant agrees to pay same within
9 ten (10) business days after Landlord delivers to Tenant a statement therefor with
10 appropriate documentation including third party invoices and receipts.

11 (b) So long as the Tenant is the City of Annapolis, the City may install signage
12 appropriate for the [Building](#) in conformance with codes, rules and regulations applicable
13 to the Property, in conformance with historic preservation and the Property's historic
14 designation, but in no event on the first floor on the Main Street side of the Property.

15 **22. Notices.**

16 All notices, demands, elections, deliveries and other communications between the
17 parties required or desired to be given in connection with this Lease (each, a "Notice"), to
18 be effective under this Lease, shall be in writing and shall be deemed to be given and
19 received (i) when delivered personally; (ii) one business day after deposit with a national
20 overnight courier service (e.g., Federal Express); or (iii) three (3) business days after
21 deposit with the United States Postal Service as certified mail, return receipt requested;
22 and in any event with all charges or postage prepaid and addressed as follows:

23 If to the Landlord,

24 KDBA, LLC
25 1503 Francke Avenue
26 Lutherville, Maryland 21093
27 Phone: 443-388-0713
28 Fax: 410-779-3764
29 Attention: John Thompson

30 with a copy to

31 Richard S. Lehmann, Esquire
32 Abramoff Neuberger LLP
33 2850 Quarry Lake Drive, Suite 300
34 Baltimore, Maryland 21209

35 And if to the Tenant,

36 Director Department of Public Works
37 145 Gorman Street
38 2nd Floor
39 Annapolis, Maryland 21401

40 with a copy to

41

1 Office of the City Attorney
2 160 Duke of Gloucester Street
3 Annapolis, Maryland 21401
4 Attention: City Attorney
5

6 Either party may from time to time designate another address for the receipt of
7 future Notices by a Notice given as provided by this Section 22 to the other party at the
8 address(es) set forth in, or as last provided by such other party in accordance with, this
9 Section 22.

10 **23. Termination; Holding Over.**

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

23 **24. Estoppel Certificates.**

24 The Tenant shall, from time to time, within ten (10) business days after a request
25 therefor by the Landlord, execute, acknowledge and deliver to the Landlord a written
26 instrument in recordable form and otherwise in such form as required by the Landlord
27 (a) certifying that this Lease is in full force and effect and has not been modified,
28 supplemented or amended in any way (or, if there have been modifications, supplements
29 or amendments thereto, that it is in full force and effect as modified, supplemented or
30 amended and stating such modifications, supplements and amendments); (b) stating the
31 Rent payable and dates to which the Rent and other charges hereunder have been paid by
32 the Tenant; (c) stating whether or not to the best knowledge of the Tenant, the Landlord
33 is in default in the performance of any covenant, agreement or condition contained in this
34 Lease; (d) stating the Effective Date and the Lease expiration date, including any optional
35 renewals; and (e) stating any other fact or certifying any other condition reasonably
36 requested by the Landlord or by any mortgagee or prospective mortgagee or purchaser of
37 the Premises or of any interest therein. In the event that the Tenant shall fail to return a
38 fully executed copy of such certificate to the Landlord within the foregoing ten (10) day
39 period, then the Tenant shall be deemed to have approved and confirmed all of the terms,
40 certifications and representations contained in such certificate, and the Tenant irrevocably
41 authorizes and appoints the Landlord as its attorney-in-fact to execute such certificate on
42 behalf of the Tenant. Any such statement delivered pursuant hereto may be relied upon
43 by any owner of the Premises, any mortgagee or prospective mortgagee or purchaser of
44 the Premises or any interest therein or any prospective assignee of any mortgagee.

1 **25. Liability of the Landlord.**

2 (a) The term “the Landlord” as used in this Lease means only the owner, the
3 mortgagee, or the trustee or the beneficiary under a deed of trust, as the case may be, for
4 the time being, of the Property, so that in the event of any transfer of title to the Property,
5 the Landlord shall be and hereby is entirely freed and relieved of all covenants and
6 obligations of the Landlord hereunder thereafter accruing.

7 (b) The Tenant acknowledges that the rents reserved in this Lease do not include
8 the cost of security guards or other security measures, and that the Landlord has no
9 obligations to provide such services. The Tenant assumes all responsibility for the
10 protection of the Tenant’s officers, contractors, agents, guests, invitees, employees or
11 licensees from the acts of third parties.

12 **26. Quiet Enjoyment.**

13 If the Tenant timely pays all the Rent herein reserved and performs and observes
14 all of the other terms, covenants and conditions of this Lease on the Tenant’s part to be
15 performed and observed hereunder, the Tenant shall, during the Term, peaceably and
16 quietly have, hold and enjoy the Premises without molestation or hindrance by the
17 Landlord or any party claiming through or under the Landlord, subject to the provisions
18 of this Lease.

19 **27. Commissions.**

20 (a) The Landlord represents to the Tenant that there are no real estate or
21 brokerage commissions payable in connection with this Lease to any party claiming
22 through the Landlord, or arising out of the actions of the Landlord.

23 (b) The Tenant represents to the Landlord that there are no real estate or
24 brokerage commissions payable in connection with this Lease to any party claiming
25 through the Tenant, or arising out of the actions of the Tenant.

26 (c) The representations set forth in this Section 27 shall survive the expiration or
27 the earlier termination of this Lease.

28 **28. Recordation.**

29 Neither this Lease or any memorandum thereof shall be recorded among the
30 public records of Anne Arundel County, Maryland without the prior written consent of
31 the Landlord, which consent may be withheld in the Landlord’s sole and absolute
32 subjective discretion. If the Landlord consents to the recordation of this Lease or a
33 memorandum thereof, the party requesting recordation shall pay all recording fees,
34 transfer taxes and documentary stamp taxes payable on, or in connection with, this Lease
35 and such recordation.

36 **29. Intentionally Deleted.**

37 **Option to Extend.**

38
39 (a) For and in consideration of the previously paid sum of Six Hundred Twenty-
40 five Thousand Dollars (\$625,000) (the “Option Fee”), the Tenant shall have the single
41 option (the “Option”) to extend the Term of the lease to July 1, 2094 upon payment of the

1 Extension Price and upon the terms and conditions set forth herein. The Option Fee is
2 non-refundable and shall not be applied or credited against the Extension Price (as
3 defined below).

4
5 (b) The Option may be exercised on or after July 1, 2019 and must be exercised
6 prior to July 1, 2029, by written notice to the Landlord and to the Landlord under the
7 Ground Lease (the "Option Notice"). If not exercised prior to July 1, 2029, then the
8 Option shall lapse and be of no further force or effect.

9
10 (c) The Extension Price shall be equal to the following formula: (i) 20,372
11 multiplied by (ii) the Per Square Foot Fair Market Rent, divided by (iii) the Fair Market
12 Capitalization Rate, but shall not be less than Six Million Dollars (\$6,000,000). Within
13 sixty (60) days of receipt of the Option Notice, the Landlord shall provide the Tenant its
14 determination of the Per Square Foot Fair Market Rent and the Fair Market Capitalization
15 Rate, together with supporting documentation therefor. The Tenant shall have sixty (60)
16 days either to disagree with the Landlord's determination and provide its own
17 determination and supporting documentation, to decline to extend the Term, in which
18 event the Option shall lapse, or to accept the Extension Price. If the Tenant fails to
19 respond within such sixty (60) day period, then the Tenant shall be deemed to have
20 declined and the Option shall lapse. If the Tenant accepts the Extension Price, then the
21 Extension Price shall be paid within thirty (30) days (the "Option Closing Date") by wire
22 transfer in accordance with wire instructions provided to Tenant by the Landlord.

23
24 (d) For the purposes of this Section 30, (i) the "Per Square Foot Fair Market
25 Value" means the then prevailing per square foot market rates for a triple net lease to a
26 creditworthy tenant for similar or comparable space for similarly located buildings and
27 (ii) the "Fair Market Capitalization Rate" means that discount rate, expressed as a
28 percentage, used to value the cash flow from an investment to determine the fair market
29 value of real estate similar to the Property.

30
31 (e) If the Tenant does not close by the Option Closing Date, then the Option shall
32 lapse and terminate, the Term shall not be extended, and the Landlord shall be relieved of
33 any and all obligations under this Section 30.

34
35 (f) Upon payment of the Extension Price, Basic Rent shall be prorated to the
36 Option Closing Date and the Tenant shall no longer be obligated to pay Basic Rent for
37 the remainder of the Term; but the Tenant shall remain fully obligated to pay all items of
38 Additional Rent, including the Tenant's Share of Common Expenses. Payment of the
39 Extension Price shall not be refunded, rebated or subject to proration pursuant to any
40 provision of this Lease.

41 42 **Miscellaneous.**

43 (a) This Lease, together with the Exhibits attached hereto, is the entire agreement
44 between the parties with respect to the matters set forth herein and therein, and all such
45 prior statements, discussions, negotiations and agreements, oral or written, are superseded

1 by this Lease and the Exhibits attached hereto and merged herein and therein. The
2 Landlord has made no representations or promises with respect to the Premises except as
3 are expressly set forth in this Lease.

4 (b) The terms, conditions and agreements herein contained shall be kept and
5 performed by the respective parties, and, subject to and without modifying the provisions
6 of Section 18, shall be binding upon and inure to the benefit of the Landlord and the
7 Tenant, their respective successors and assigns.

8 (c) All Section headings or titles in this Lease are for convenience of reference
9 only, and shall not be deemed to affect the meaning or construction of any provision of
10 this Lease. All references in this Lease to Sections are to Sections in this Lease, unless
11 otherwise expressly indicated.

12 (d) If any provision (or any part of any provision) contained in this Lease shall
13 for any reason be held to be invalid, illegal or unenforceable in any respect, such
14 invalidity, illegality or unenforceability shall not affect any other provision (or remaining
15 part of the affected provision) of this Lease, but this Lease shall be construed as if such
16 invalid, illegal or unenforceable provision (or part thereof) had never been contained
17 herein but only to the extent it is invalid, illegal or unenforceable.

18 (e) Time is of the essence of this Lease.

19 (f) This Lease may be executed in two or more counterparts and all counterparts
20 shall collectively constitute a single instrument.

21 (g) This Lease shall be governed by the laws of the State of Maryland, excluding
22 any Maryland choice of law principles.

23 (h) Unless otherwise indicated, the term “days” shall mean calendar days.

24 (i) Noting contained in this Lease shall be construed to constitute one party as an
25 agent, representative or employee of the other party, or to create any relationship between
26 the parties other than landlord and tenant.

27 **IN WITNESS WHEREOF**, the parties have executed this Agreement of Lease
28 under seal as of the date first written above.

29
30
31
32
33
34
35
36
37
38
39
40
41
42

WITNESS:

KDBA, LLC, a Maryland limited liability company, Landlord

By: **KDBA Managing Member, LLC**, a Maryland limited liability, its Managing Member

By: **Weston & Cameron, LLC**, a Maryland Limited Liability Company, its Managing Member

By: _____
Todd Hylton, its Managing Member

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34

WITNESS:

THE CITY OF ANNAPOLIS,
a municipal corporation of the State of
Maryland, Tenant

Regina C. Watkins-Eldridge, MMC,
City Clerk

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

APPROVED FOR FINANCIAL :
SUFFICIENCY BY:

REVIEWED AND APPROVED

Bruce T. Miller, Director
Finance Department

Thomas C. Andrews, City Manager

REVIEWED AND APPROVED BY:

David Jarrell, Director
Department of Public Works

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

OFFICE OF THE CITY ATTORNEY

1
2
3
4
5
6
7
8

EXHIBIT A
Description of Land

EXHIBIT B

Lobby

1
2
3
4
5
6
7
8
9
10