

160 Duke of Gloucester Street
Annapolis, MD 21401

Signature Copy
O-48-15

..Title

Agreement of Purchase and Sale – For the purpose of approving the purchase and sale of property located at 9 St. Mary's Street, Annapolis, Maryland 21401; and matters generally relating to said sale.

..Body

**CITY COUNCIL OF THE
City of Annapolis**

Ordinance 48-15

Introduced by: Mayor Pantelides

Referred to

Finance Committee
Economic Matters Committee

AN ORDINANCE concerning

Agreement of Purchase and Sale

FOR the purpose of approving the purchase and sale of property located at 9 St. Mary's Street, Annapolis, Maryland 21401; and matters generally relating to said sale.

WHEREAS, the City is the fee simple owner of an improved parcel of land located at 9 St. Mary's Street, Annapolis, Maryland 21401; and

WHEREAS, the Buyer wishes to purchase the Property, as defined in the attached Agreement of Purchase and Sale, from the City, and the City wishes to sell the Property to the Buyer, upon the terms and conditions set forth in that Agreement; and

WHEREAS, the City Council voted to approve Business and Miscellaneous Items, ID-279-15 for the sale of the Property to Buyer at a City Council meeting held on July 27, 2015.

WHEREAS, Article III, Section 7 of the Charter of the City of Annapolis requires the passage of an ordinance to authorize the sale; and

NOW, THEREFORE,

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the Agreement of Purchase and Sale, a copy of which is attached hereto and made a part hereof, between O2/LAFAYETTE and the City of Annapolis for the sale of certain municipal property, is 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 7 of the Charter of the City of Annapolis, the City Council finds that the so sold City-owned property is no longer needed for public use.

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

EXPLANATION

CAPITAL LETTERS indicate matter added to existing law.

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

Underlining indicates amendments

ADOPTED this 7th day of December, 2015.

Aye: Mayor Pantelides, Alderman Budge, Alderman Paone,
Aldermoman Pindell Charles, Aldermoman Finlayson, Alderman Kirby,
Alderman Pfeiffer and Alderman Arnett.

Absent: Alderman Littmann

THE ANNAPOLIS CITY
COUNCIL

Michael Pantelides
Michael J. Pantelides, Mayor

Date:

12-10-2015

ATTEST

Regina Watkins-Eldridge
Regina Watkins-Eldridge, MMC,
City Clerk

Date:

12/14/15

CITY OF ANNAPOLIS AGREEMENT OF PURCHASE AND SALE

This Agreement of Purchase and Sale (the “Agreement”) is made this ___ day of _____, 2015, by and between O2 holdings, LLC, a Maryland limited liability company trading as **O2/LAFAYETTE** (collectively, the “Buyer”), and the **City of Annapolis**, a municipal corporation of the State of Maryland (the “City”).

WHEREAS, the City is the fee simple owner of an improved parcel of land consisting of approximately twenty-six thousand one hundred thirty-six (26,136) square feet, more or less, located at 9 St. Mary’s Street, Annapolis, Maryland 21401, as more particularly described in **Exhibit A** attached hereto and made a part hereof (collectively, the “Land”); and

WHEREAS, the Land is improved by a building of approximately thirteen thousand (13,000) square feet of floor space (the “Building”), and other additional improvements, including, but not limited to, paved parking areas, appurtenant thereto; and

WHEREAS, the Buyer wishes to purchase the Property (as defined herein) from the City, and the City wishes to sell the Property to the Buyer, upon the terms and conditions set forth in this Agreement; and

WHEREAS, the City Council voted to approve Business and Miscellaneous Items, ID-279-15 for the sale of the Property to Buyer at a City Council meeting held on July 27, 2015.

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

1. Agreement to Sell and Purchase.

a. Subject to the terms and conditions hereinafter set forth, and in accordance with the schedule set forth in **Exhibit B**, the City hereby agrees to sell and convey to the Buyer, and the Buyer hereby agrees to purchase from the City, in fee simple absolute all of the Property, defined as follows:

- (i) The Land;
- (ii) The Building and all other improvements, if any, situated thereon;
- (iii) All and singular the rights and appurtenances pertaining thereto, including any right, title and interest of the City in and to adjacent alleys and rights-of-way;
- (iv) All fixtures, if any, located on, attached to, or used in connection with the Buildings and other improvements situated thereon; and

- (v) Such other rights, interests and properties as may be specified in this Agreement to be sold, transferred, assigned, or conveyed by the City to the Buyer.

b. The Property shall be delivered by the City to, and the Buyer accepts the Property in, “as is, where-is” condition as of the last day of the Buyer’s Study Period (as defined herein). The City makes no representation or warranty with respect to the condition or state of the Property, 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 Agreement, 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 Property.

c. The Buyer represents and warrants to the City that: (i) the Buyer is knowledgeable in matters of real estate or had an opportunity to consult with a real estate professional; (ii) the Buyer is relying solely on the Buyer’s own expertise and/or the expertise of the Buyer’s consultants with respect to the Property; and (iii) subject to Paragraph 5, the Buyer shall assume all risk that adverse matters, including, but not limited to, adverse physical and environmental conditions, may not have been revealed by the Buyer’s or the Buyer’s consultants’ inspections, tests, studies, or other investigations of the Property during the Study Period.

2. Purchase Price.

a. The Buyer shall pay the City the sum of One Million Five Hundred Twenty-Five Thousand Dollars and No Cents (\$1,525,000.00) for the Property (the “Purchase Price”).

b. The Purchase Price shall be paid to the City by the Buyer as follows:

- (i) Within five (5) business days after the date of receipt by the Buyer of a fully executed copy of this Agreement (which date of receipt is referred to herein as the “Effective Date”), the Buyer shall deliver to Hyatt & Weber, P.A. (the “Escrow Agent”) the sum of Fifty Thousand Dollars and No Cents (\$50,000.00) (the “Deposit”).
- (ii) The Deposit shall be paid in cash and shall be held by the Escrow Agent in accordance with the terms of this Agreement. The Deposit shall be held by Escrow Agent in a federally insured non-interest bearing account. The Deposit shall be applied to payment of the Purchase Price and paid by the Escrow Agent to the City at the Closing (as defined herein), or, if the Closing does not occur, shall be retained by the City or refunded to the Buyer, as the case may be, in accordance with the terms of this Agreement.

(iii) The balance of the Purchase Price shall be paid by the Buyer to the City at the Closing by wire transfer of immediately available funds.

3. Escrow Provisions.

a. If a dispute arises between the City and the Buyer as to when, where or to whom the Deposit is to be disbursed by the Escrow Agent, the Escrow Agent may, in the exercise of its sole discretion, in lieu of disbursing the Deposit to a party to this Agreement, pay the Deposit to the Clerk of the Circuit Court for Anne Arundel County or any other court having jurisdiction over disputes between the parties hereto with respect to the Agreement, under an interpleader action or such other legal or equitable proceeding and the Escrow Agent shall have no further obligations hereunder with respect to the Deposit or otherwise.

b. In the event that any dispute arises under this Agreement between the City and the Buyer resulting in the Escrow Agent being made a party to any litigation, the Escrow Agent shall have no personal liability on account of its duties hereunder in the absence of fraud or willful misconduct on the Escrow Agent's part.

4. Title and Deed to the Property.

a. The Buyer shall, at its sole cost and expense, cause a title company of the Buyer's choice (the "Title Company") to issue and deliver to the Buyer a title commitment or report (the "Title Commitment") with respect to the Property during the Study Period.

- (i) In the event that the Title Commitment is not satisfactory to the Buyer, the Buyer shall give the City written notice before the expiration of the Buyer's Study Period of the title issues it desires the City to remedy with respect to the Property (the "Title Notice"). The City may elect to cure, or not to cure, any of the unsatisfactory title issues by written notice to the Buyer within five (5) business days of receipt of the Title Notice.
- (ii) In the event the City is unable or unwilling to satisfy all or some of such title issues within sixty (60) calendar days after such Title Notice, the Buyer may, at its option, either accept title of the Property, without an adjustment in the Purchase Price, in which event such unsatisfied title issues shall be deemed to be waived for all purposes; or rescind this Agreement, whereupon the Deposit shall thereupon be returned to the Buyer, the parties shall have no further obligations or liabilities to one another, and the Agreement shall be null and void regardless of the expiration of the Buyer's Study Period.
- (iii) If the City is able and willing to satisfy some or all of the title issues, the City agrees that it shall execute and deliver to the Title Company at the Closing such documents,

in the form required by the Title Company, in order for the Title Company to address and remedy such title issues.

b. Upon payment as above provided of the Purchase Price, a deed for the Property containing covenants of special warranty, further assurances and no encumbrances shall be executed by the City and delivered to the Buyer at the Closing (the "Deed"), which shall convey the Property in fee simple absolute to the Buyer.

5. Study Period.

a. The Buyer shall have a period commencing on the Effective Date and ending on the seventy-fifth (75th) calendar day after the Effective Date (collectively, the "Study Period") during which the Buyer shall investigate the Property to determine, in its sole discretion, if the Property is suitable for the Buyer's use and development. In the event that such seventy-fifth (75th) calendar day is not a business day (that is, a Saturday, Sunday or banking holiday in the State of Maryland), then the day of expiration shall be extended to the next succeeding business day.

b. The Buyer's access to the Property during such Study Period shall be pursuant to the City of Annapolis Right of Entry and Waiver of Liability Agreement dated September 24, 2015 (the "Right of Entry"), attached hereto as **Exhibit C**.

c. In the event that the results of the Study Period are unsatisfactory to the Buyer for any reason whatsoever, or the Buyer determines for any reason in the Buyer's sole, exclusive and unreviewable judgment, that the Property is not suitable for the Buyer's use and development, then the Buyer may terminate this Agreement by giving written notice to City prior to the expiration of the Study Period. Upon such termination, the Deposit shall be thereupon be returned to the Buyer, this Agreement shall thereafter be null and void, and the parties shall have no further obligations and liabilities to one another.

d. If no notice is given to the City pursuant to this Paragraph 5, the Buyer shall be deemed to have affirmed this Agreement and its decision to purchase the Property, and the Deposit shall become non-refundable.

6. Representations and Warranties of City. The City hereby represents and warrants to the Buyer, which representations and warranties shall be true and correct as of the date hereof and as of the date of the Closing, that:

a. The City has full power to execute, seal, acknowledge and deliver this Agreement and to consummate each and all of the transactions contemplated hereby, and has complied with all applicable laws to the extent necessary on its part to consummate each and all of the transactions contemplated hereby, and that this Agreement is its legal and binding obligation, enforceable against it in accordance with its terms. All persons whose signatures or consents are

required as a condition to the City's execution of this Agreement and consummation of the transactions contemplated hereby have also signed this Agreement, thereby ratifying same.

b. Subject to Paragraph 4(a), the City has fee simple title to the Property of record and in fact, which title to the Property is good, marketable and insurable, free and clear of all mortgages, liens, encumbrances, leases, tenancies, security interests, and judgments adversely affecting title.

c. Performance of this Agreement shall not result in any breach of, or constitute any default under, or result in the imposition of, any lien or encumbrance upon the Property under any agreement or other instrument to which the City is a party or by which the City or the Property might be bound.

d. To the City's knowledge, there are no legal actions, suits, inquiries, investigations, claims or other legal or administrative proceedings, including condemnation cases, special assessments or moratoriums of any kind pending or threatened, against the Property or any portion thereof.

e. There are no parties in possession of any portion of the Property as lessees, and there are no leases or occupancy agreements currently in effect which affect the Property.

f. The City has made no commitments relating to the Property which would impose an obligation upon the Buyer to make any contribution or dedications of money or land or to construct, install, or maintain any improvements of a public or private nature on or off the Property.

g. The City is not, and at the Closing shall not be, in default under any provision of any mortgage, indenture, deed of trust, instrument or agreement relating to indebtedness for borrowed money or affecting the Property.

h. The City has not entered into any other validly existing contract of sale for the Property or any part thereof, and the City has not otherwise assigned or encumbered this Agreement. No other party has an option or right of first refusal to purchase the Property or any portion thereof.

i. There are no construction, management, leasing, service, equipment, supply, maintenance or concession agreements in effect with respect to the Property that will survive the Closing.

7. **Representations and Warranties of Buyer.** The Buyer hereby represents and warrants to the City, which representations and warranties shall be true and correct as of the date hereof and as of the date of the Closing, that:

a. The Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Maryland, it has full power to execute, seal, acknowledge and deliver this Agreement and to consummate each and all of the transactions contemplated hereby, it has complied with all applicable laws to the extent necessary on its part to consummate each and all of the transactions contemplated hereby, that the Agreement is its legal and binding obligation, enforceable against it in accordance with its terms. All persons whose signatures or consents are required as a condition to the Buyer's execution of this Agreement and consummation of the transactions contemplated hereby have also signed this Agreement, thereby ratifying same.

b. The Buyer is not, and at the Closing shall not be, in default under any provision of any mortgage, indenture, deed of trust, instrument or agreement relating to indebtedness for borrowed money affecting this Agreement or the purchase of the Property.

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

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

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

8. Conditions to each Party's Obligation to Close.

a. The City shall not have any obligation to consummate the transactions provided by this Agreement and thus to effect the Closing hereunder unless at or before the time of the Closing or the required time for performance, as applicable, each and every of the following conditions shall have been fully met and complied with by the Buyer:

- (i) Each and all the representations and warranties of the Buyer in Paragraph 7 shall be true and accurate as of the time of Closing as though such representations and warranties were made at such time.
- (ii) The Buyer shall have performed and complied with all covenants and agreements required by this Agreement to be performed and complied with by them prior to or at the time of Closing.
- (iii) The Buyer shall have obtained a City building permit and all other necessary City permits or approvals, allowing the Buyer to renovate and construct a multi-unit

residential property on the Property substantially in accordance with the Buyer's response to the City's Request For Proposals No. 15-14 (collectively with those permits and approvals in Paragraph 8(b)(iv) below, the "Applicable Permits").

b. The Buyer shall not have any obligation to consummate the transactions provided by this Agreement and thus to effect the Closing hereunder unless at or before the time of the Closing or the required time for performance, as applicable, each and every of the following conditions shall have been fully met and complied with by the City:

- (i) Each and all the representations and warranties of the City in Paragraph 6 shall be true and accurate as of the time of Closing as though such representations and warranties were made at such time.
- (ii) The City shall have performed and complied with all covenants and agreements required by this Agreement to be performed and complied with by them prior to or at the time of Closing.
- (iii) No material changes in the condition of the Property shall have occurred from the condition existing during the Study Period.
- (iv) The City shall have issued the Buyer a building permit and all other necessary City permits or approvals, allowing the Buyer to renovate and construct a multi-unit residential building on the Property substantially in accordance with the Buyer's response to the City's Request For Proposals No. 15-15 (collectively with those permits and approvals in Paragraph 8(a)(iii) above, the "Applicable Permits").

c. The parties agree to each use their best reasonable efforts to cause those conditions which they are respectively to satisfy to be so satisfied prior to the Closing.

d. Each party hereby reserves and is hereby granted by the other party the right, at that party's option, to waive in writing at any time and from time to time any condition precedent or provision of this Agreement that expressly grants to that party the right to terminate this Agreement and the right to elect to close under this Agreement without regard to any such condition precedent or provisions so waived by that party.

9. Further Assurances; Delays.

a. The parties agree to act in good faith, bona fide and to properly and fully execute in a timely manner, any and all documents reasonably necessary to carry out the terms and intent of this Agreement. The parties shall also, at all times in the future, upon the request of the other (and at the expense of the other), execute and deliver to the other all additional and further reasonable assurances that may be necessary to fully consummate and carry out the terms and

intent of this Agreement. The failure of any party so to do shall constitute an event of default on the part of that party pursuant to Paragraph 12 of this Agreement

b. The Buyer shall diligently and in good faith begin the process for obtaining all Applicable Permits pursuant to the schedule attached hereto as **Exhibit B**. If the Buyer shall fail to submit applications for the Applicable Permits, as specified in this Paragraph, then the City may give written notice to the Buyer specifying the nature of such failure, and in the event the Buyer fails to remedy such failure within thirty (30) business days after receipt of written notice from the City (unless such cure reasonably requires a longer period of time and the Buyer commences such cure within such thirty (30) business day period and thereafter diligently prosecutes such cure to completion), then the City may terminate this Agreement. Upon such termination, the Deposit shall be thereupon be returned to the Buyer, this Agreement shall thereafter be null and void, and the parties shall have no further obligations and liabilities to one another.

c. Upon mutual written agreement by both parties, the schedule set forth in **Exhibit B** and the obligations set forth in this paragraph may be suspended in the event of any litigation or other adversarial proceedings directly related to the Property, this Agreement or permits or other permissions requisite for the development of the Property. In the event of such an agreed upon suspension , the obligations set forth in this paragraph shall resume upon the final resolution of any such litigation or proceedings after accounting for the delay caused thereby, and as further specified in the parties' written agreement.

d. The Buyer shall not be responsible for delays in the performance of any or all of the duties and obligations imposed upon or assumed by it hereunder caused solely by unforeseeable causes beyond its control or the control of its subcontractors or suppliers of materials, such as acts of God, strikes, or freight embargoes, but expressly excluding any changes in market conditions. Before the beginning of any such delay, if the delay is known to the Buyer, or in any event no later than promptly following the beginning of any such delay, the Buyer shall verbally notify the City of the delay and then give the City written notice of the delay within forty-eight (48) hours of the verbal notice. Both the verbal and written notices shall include when the delay is expected, if known prior to commencing, the anticipated length of the delay, and the cause of the delay. The City may also require the Buyer to suggest possible alternatives, solutions and/or remedies to the delay.

e. The City shall reasonably cooperate with the Buyer, at the Buyer's sole cost and expense, in the Buyer's efforts to obtain the Applicable Permits including, but not limited to, signing applications, plans, plats and other documents reasonably required by the Buyer to obtain the Applicable Permits; provided, however, that sole responsibility for all such Applicable Permits shall always remain with the Buyer.

f. Upon obtaining all Applicable Permits, and upon the completion of the Closing, the Buyer shall diligently and in good faith proceed with the development of the Property (and

the Building) to achieve completion within twenty-four (24) months from the date of the Closing, expressly excepting those circumstances permitted pursuant to this Paragraph 9.

g. Nothing contained in this Paragraph 9 shall require either party to assume any liability or expense not expressly required by the terms of this Agreement.

10. Leases, Changes and Encumbrances.

a. So long as this Agreement remains in full force and effect, the City shall not, without the written consent of the Buyer, which consent may be withheld for any reason, enter into any lease or other contract affecting the Property.

b. From and after the Effective Date, the City will refrain from (i) performing any construction, or removal of any improvements, or making any other changes or improvements upon or about the Property without the consent of the Buyer; or (ii) creating or incurring, or suffering to exist, any mortgage, lien, pledge, or other encumbrance in any way affecting the Property without the consent of the Buyer.

11. Closing.

a. The consummation of the transactions contemplated herein, including payment of the Purchase Price to the City and delivery of the Deed to the Buyer, (the "Closing") shall occur on the thirtieth (30th) day after the satisfaction, or waiver by the Buyer, of all of the conditions precedent to Closing set forth in Paragraph 8 above (including, without limitation, issuance of all Applicable Permits), or on such earlier date as the Buyer shall determine, provided the Buyer shall give the City not less than ten (10) business days prior notice thereof.

b. The Closing shall take place at the offices of the Escrow Agent, or at such other place as may be mutually acceptable in writing by both the Buyer and the City. The deposit at such location of the Purchase Price by the Buyer, the Deed by the City, and such other papers as are required from either party pursuant to the terms of this Agreement shall be deemed good and sufficient tender of performance of this Agreement.

c. The City, via the Deed, shall deliver exclusive possession of the Property to the Buyer at the time of the Closing in the condition specified in Paragraph 1. The Property is to be held at the risk of the City until legal title has passed or possession has been given to the Buyer on the date of the Closing. To the extent that the City maintains insurance with respect to the Property, the City shall continue to insure the Property through the date of the Closing.

d. The cost of all documentary stamps, recordation taxes and transfer taxes imposed by law upon this Agreement and the Buyer's purchase of the Property shall be split equally by the parties; provided, however, that the City shall be solely responsible for payment of any

development transfer tax that may be payable as a result of the transfer of the Property by the City.

e. On the date of the Closing, the Buyer shall assume sole responsibility for any and all taxes, general or special, and other public, governmental and private charges and assessments which shall or may accrue or be incurred on or after the date of the Closing against the Property in the amounts and at the Property's value as of the date of the Closing. Such responsibility includes, but is not limited to, 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 on or after the date of the Closing. It is the Buyer's sole responsibility to contact the State of Maryland to have the Property's value re-assessed or changed, as may be determined necessary or appropriate.

f. On the date of the Closing, the Buyer shall arrange for and assume sole responsibility for any and all utilities, including gas, electricity, light, heat, steam, power, water and sewer, telephone, internet, cable, telecommunications and other services used in connection with the operation of the Property, and the Buyer shall be solely responsible for payment of the same on and after the date of the Closing. Provided, however, that the Buyer shall not be responsible for and required to assume any existing City contracts or agreements for such services.

g. In the event that the Closing is not able to or does not occur as specified in this Paragraph 11, then either party shall have the right to terminate this Agreement and the parties' respective obligations hereunder by written notice to the other party. In the event of such termination, this Agreement shall be null and void, the parties shall have no further obligations or liabilities to one another, and the Buyer shall be entitled to a refund of its Deposit only in the absence of willful misconduct or default of this Agreement on the Buyer's part.

h. Notwithstanding any other provision of this Agreement, in the event that the Closing does not occur and/or this Agreement is not otherwise terminated within two (2) years from the Effective Date, then this Agreement shall automatically terminate at the conclusion of that two (2) year period, the parties shall have no further obligations or liabilities to one another, and the Buyer shall be entitled to a refund of its Deposit. The parties may mutually agree in writing to extend such two (2) year time period, and, including as specified in Paragraph 9 above.

12. Default.

a. If (i) the City wrongfully fails to deliver the Deed to the Property and the Buyer is ready, willing and able to perform, or if (ii) the City shall otherwise breach or default on any of the provisions of this Agreement, and the City fails to cure such other breach or default within thirty (30) business days after receipt of written notice from the Buyer specifying the nature of

such breach or default (unless such cure reasonably requires a longer period of time and the City commences such cure within such thirty (30) business day period and thereafter diligently prosecutes such cure to completion), then the Escrow Agent upon the Buyer's demand shall promptly return to the Buyer its Deposit and, additionally, the Buyer shall be entitled to exercise any and all rights and to seek any and all remedies which the Buyer may hold or to which it may be entitled, including a suit to compel the City to specifically perform this Agreement.

b. If (i) the Buyer wrongfully fails to close on the Property, including payment of the Purchase Price, and the City is ready, willing and able to perform, or, if (ii) the Buyer shall otherwise breach or default on any of the provisions of this Agreement, and the Buyer fails to cure such other breach or default within thirty (30) business days after receipt of written notice from the City specifying the nature of such breach or default (unless such cure reasonably requires a longer period of time and the Buyer commences such cure within such thirty (30) business day period and thereafter diligently prosecutes such cure to completion) then the Buyer shall forfeit its Deposit to the City, which sum shall be deemed by the parties to be liquidated damages for the failure of the Buyer to perform the obligations imposed upon it pursuant to the terms of this Agreement, such damages not otherwise being ascertainable, and, additionally, the City shall be entitled to exercise any and all rights and to seek any and all remedies which the City may hold or to which it may be entitled, including a suit to compel the Buyer to specifically perform this Agreement.

13. Broker Fees and Commissions. The City and the Buyer hereby covenant and warrant to each other that neither of them has dealt with a broker or any other person who may be entitled to a commission or fee arising out of the sale of the Property contemplated by this Agreement.

14. Right of First Refusal.

a. Except as otherwise provided in this Paragraph 14, the Buyer shall not re-sell the Property, or any portion thereof, within twenty-four (24) months from the date of the Closing without first providing the City with a right of first refusal and Notice of Sale, as specified and described in this Paragraph..

b. The Buyer shall give prior written notice to the City of its desire to sell the Property, or any portion thereof, specifying the name of the potential purchaser, the proposed consideration, the portion of the Property to be sold (as applicable), and the outside date for such sale (collectively, the "Notice of Sale").

c. The City shall then have thirty (30) calendar days from receipt of the Notice of Sale to provide a written response to the Buyer indicating whether it is interested in re-purchasing the entire Property from the Buyer at the same Purchase Price (\$1,525,000.00) and on the same terms and conditions as specified in this Agreement (the "Notice of Re-Purchase"). The Notice of Re-Purchase shall indicate the terms and conditions of the re-purchase and the closing details.

d. If the City declines or fails to respond within the thirty (30) calendar day period, the Buyer may then proceed with the proposed sale, so long as the sale is consummated within six (6) months from the Notice of Sale.

e. If the City provides the Buyer with its Notice to Re-Purchase, as specified in this Paragraph, the City shall transfer ten percent (10%) of the Purchase Price to the Escrow Agent within forty (40) calendar days of the Notice to Re-Purchase, to be held as a deposit for such re-purchase and a second closing shall occur sixty (60) calendar days from the Notice to Re-Purchase upon the terms and conditions set forth in such Notice to Re-Purchase.

f. Any sale of the Property, or any portion thereof, in violation of this Paragraph shall be null and void.

g. This Paragraph and the City's right of first refusal shall not apply to any individual condominiums to be sold to residential home owners in accordance with the Buyer's response to the City's Request For Proposals No. 15-14.

15. Miscellaneous.

a. *Performance On Saturdays, Sundays and Holidays.* Whenever the date fixed for the payment of funds, the giving of notice, or the performance of any other provision of this Agreement falls on a Saturday, Sunday, legal holiday or any day on which banking institutions in the State of Maryland are authorized by law to close, then such payment, notice or performance need not be made on such date, but shall be made on the next succeeding business day with the same force and effect as if made on the date fixed.

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

c. *Waiver of Remedies for Breach or Default.* No failure or delay by either party to insist upon the strict performance of any term, condition or covenant of this Agreement, 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 that party from exercising any such right, power or remedy at any later time or times.

d. *Independent Contractor Status.* Nothing contained in this Agreement shall be construed to constitute either party as an agent, representative or employee of the other party, or to create any relationship between the parties other than seller and buyer.

e. *Binding Effect.* This Agreement shall bind and inure to the benefit of the City and the Buyer, and their respective successors and assigns. Neither party shall have the right to assign its rights under this Agreement without the prior written approval of the other party, which approval shall not be unreasonably delayed or withheld; provided, however, that the Buyer shall have the right to assign its rights under this Agreement to any entity affiliated with or related to the Buyer upon prior written notification to the City. Upon such assignment to an affiliated or related entity, the original Buyer shall have no further obligation or liability under this Agreement from the date of full execution of an agreement between the City and the affiliated or related entity in which such entity assumes all such obligations and liabilities of this Agreement.

f. *Governing Law/Waiver of Jury Trial.* In all actions arising from this Agreement, the laws of the State of Maryland shall govern, and the venue for all actions initiated pursuant to this Agreement shall be exclusively the Courts of Anne Arundel County, Maryland. The parties waive jury trial in all actions initiated pursuant to this Agreement.

g. *Recitals.* The recitals (WHEREAS clauses) of this Agreement are incorporated into this Agreement.

h. *Severability.* If any of the provisions of this Agreement 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.

i. *Survival.* Those paragraphs in this Agreement which by their nature are intended to survive shall survive the termination of this Agreement.

j. *Time of the Essence.* Time is of the essence with respect to each and every provision of this Agreement.

k. *Counterparts.* This Agreement 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.

l. *Authorization.* This Agreement is authorized by the City Council pursuant to O-48-15.

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

To the City: City Attorney
 160 Duke of Gloucester Street
 Annapolis, Maryland 21401
 Email: cityattorney@annapolis.gov

To the Buyer: O2 Holdings, LLC
 140 Lafayette Avenue
 Annapolis, Maryland 21401
 Email: jpohare@comcast.net

[Signatures appear on the next page]

IN WITNESS WHEREOF, the parties hereto have affixed their signatures and seals to this Agreement the day and year first above written.

WITNESS/ATTEST:

CITY OF ANNAPOLIS

Regina C. Watkins-Eldridge, MMC,
City Clerk

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

APPROVED FOR FINANCIAL SUFFICIENCY: REVIEWED AND APPROVED BY:

Bruce T. Miller, Director
Finance Department

Thomas C. Andrews, City Manager

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

OFFICE OF THE CITY ATTORNEY

WITNESS/ATTEST:

O2 HOLDINGS, LLC

By: _____ (SEAL)
Name:
Title:

Joinder of Escrow Agent

The undersigned joins in the foregoing Agreement of Purchase and Sale to acknowledge and evidence its agreement to serve as the Escrow Agent hereunder and to comply with the provisions of this Agreement as they apply to the Escrow Agent, and its rights, duties and obligations, and to acknowledge its receipt of the Deposit from the Buyer in the form of cash in the amount of Fifty Thousand Dollars and No Cents (\$50,000.00) this _____ day of _____, 2015.

HYATT & WEBER, P.A.

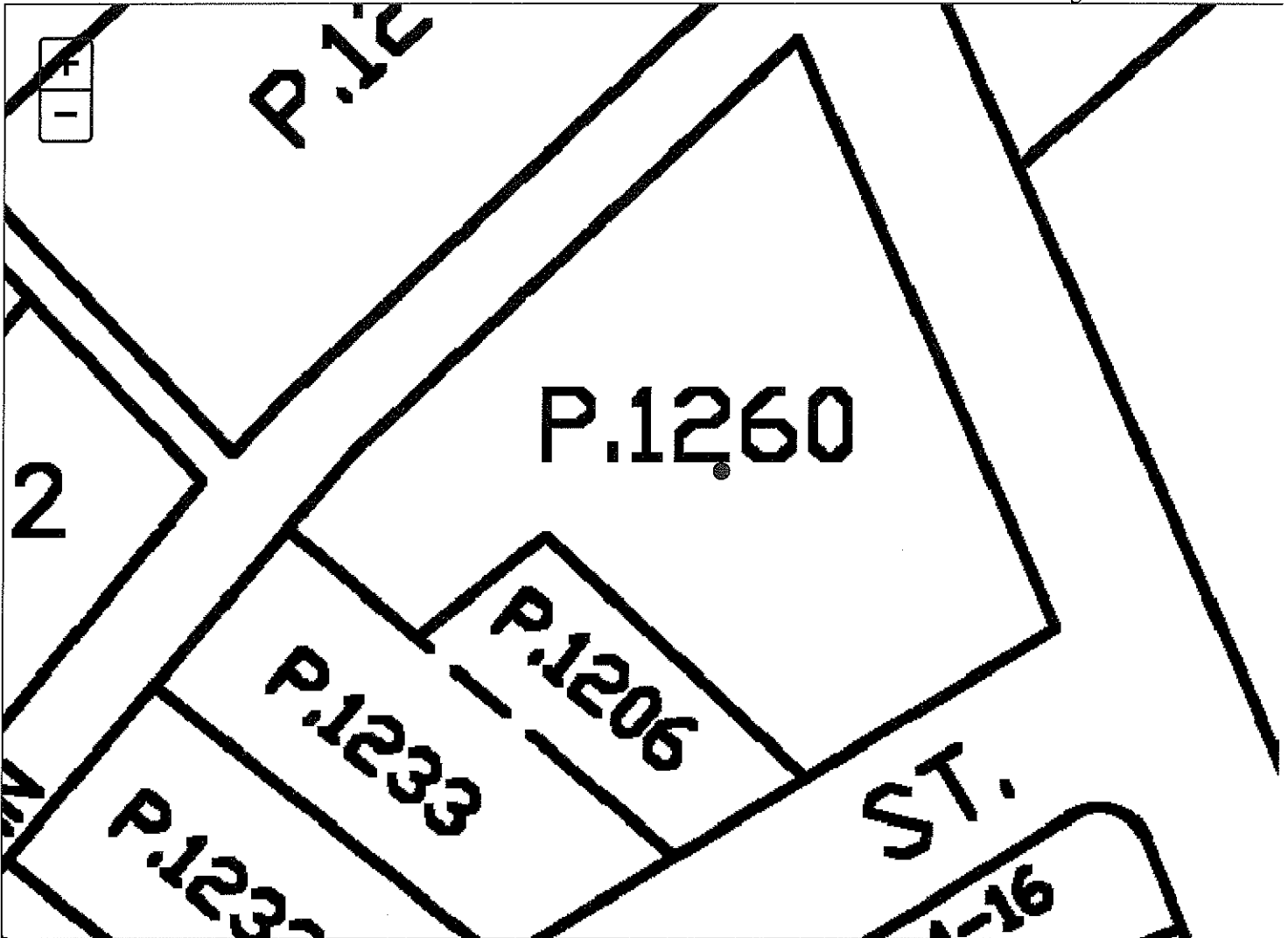
By: _____
Name:
Title:

Real Property Data Search (w1)

Guide to searching the database

Search Result for ANNE ARUNDEL COUNTY

View Map		View GroundRent Redemption			View GroundRent Registration				
Account Identifier:		District - 06 Subdivision - 000 Account Number - 90003858							
Owner Information									
Owner Name:		CITY OF ANNAPOLIS MAYOR & ALDERMN			Use:		EXEMPT COMMERCIAL NO		
Mailing Address:		ANNAPOLIS MD 21401			Principal Residence:		/00274/ 00157		
Deed Reference:									
Location & Structure Information									
Premises Address:		ANNAPOLIS 21401-0000			Legal Description:		6 AC COMM SERVICE B ST MARYS & COMPROMISE ST ANNAPOLIS		
Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
052A	0020	1260		000				2015	Plat Ref:
Special Tax Areas:				Town:		ANNAPOLIS			
				Ad Valorem:					
				Tax Class:					
Primary Structure Built		Above Grade Enclosed Area		Finished Basement Area		Property Land Area		County Use	
						26,136 SF			
Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation			
Value Information									
		Base Value		Value As of 01/01/2015		Phase-in Assessments As of 07/01/2015		As of 07/01/2016	
Land:		2,412,300		2,414,600					
Improvements		211,800		211,800					
Total:		2,624,100		2,626,400		2,624,867		2,625,633	
Preferential Land:		0						0	
Transfer Information									
Seller:		Date:			Price:				
Type:		Deed1: /00274/ 00157			Deed2:				
Seller:		Date:			Price:				
Type:		Deed1:			Deed2:				
Seller:		Date:			Price:				
Type:		Deed1:			Deed2:				
Exemption Information									
Partial Exempt Assessments:		Class		07/01/2015		07/01/2016			
County:		670		2,624,867.00		2,625,633.00			
State:		670		2,624,867.00		2,625,633.00			
Municipal:		670		2,624,867.00		2,625,633.00		2,624,867.00	
2,625,633.00									
Tax Exempt:		Special Tax Recapture:							
Exempt Class:		NONE							
Homestead Application Information									
Homestead Application Status: No Application									



The information shown on this map has been compiled from deed descriptions and plats and is not a property survey. The map should not be used for legal descriptions. Users noting errors are urged to notify the Maryland Department of Planning Mapping, 301 W. Preston Street, Baltimore MD 21201.

If a plat for a property is needed, contact the local Land Records office where the property is located. Plats are also available online through the Maryland State Archives at www.plats.net (<http://www.plats.net>).

Property maps provided courtesy of the Maryland Department of Planning ©2011.

For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us/OurProducts/OurProducts.shtml (<http://www.mdp.state.md.us/OurProducts/OurProducts.shtml>).



(<http://imsweb05.mdp.state.md.us/website/mosp/>)

**EXHIBIT B
SCHEDULE**

1
2
3
4 **Effective Date:** The Effective Date shall be the date on which both parties have signed the
5 Agreement of Purchase and Sale, which shall be five (5) business days after
6 receipt by the Buyer of a fully executed copy of that Agreement.
7

8 **Study Period:** The Study Period shall start on the Effective Date and continue for seventy-five
9 (75) calendar days.
10

11 **Title Notice:** The Title notice shall be delivered to the City no later than the expiration of the
12 Study Period. The City shall respond within five (5) business days of receiving
13 the Title Notice. The Buyer shall notify the City of its decision to terminate or
14 proceed by within sixty (60) calendar days of the City's receipt of the Title
15 Notice.
16

17 **Applicable Permits: City's Historic Preservation Commission**
18 Subject to the schedule of the City's Historic Preservation Commission, the
19 Buyer shall schedule a Pre-Application Meeting with the City's Historic
20 Preservation Commission within sixty (60) calendar days following the end of
21 the Study Period.
22

23 **City Board of Appeals**

24 The Buyer shall submit an application for a Special Exception for the Property to
25 the City Board of Appeals, or the applicable approving entity should the City
26 Board of Appeals no longer be authorized to approve special exceptions, within
27 one hundred twenty (120) calendar days of Buyer receiving preliminary
28 comments from the City's Historic Preservation Commission following the Pre-
29 Application Meeting between the Buyer and the City's Historic Preservation
30 Commission.
31

32 **City's Historic Preservation Commission**

33 Subject to the schedule of the City's Historic Preservation Commission, the
34 Buyer shall appear at a hearing before the City's Historic Preservation
35 Commission within sixty (60) calendar days of obtaining the Special Exception
36 from the City's Board of Appeals, or the applicable approving entity should the
37 City Board of Appeals no longer be authorized to approve such special
38 exceptions..
39

40 **City's Department of Neighborhood and Environmental Programs**

41 The Buyer shall submit an application for a City building permit for the Property
42 to the City's Department of Neighborhood and Environmental Programs within
43 one hundred twenty (120) calendar days of written approval issued by the City's
44 Historic Preservation Commission.
45

46 **Closing:** On the thirty (30th) calendar day after satisfaction/waiver by the Buyer of all of
47 conditions in Paragraph 8 of the Agreement of Purchase and Sale, or on such
48 earlier date as the Buyer determines but with not less than ten (10) business days
49 prior notice to the City.
50

**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 24th 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

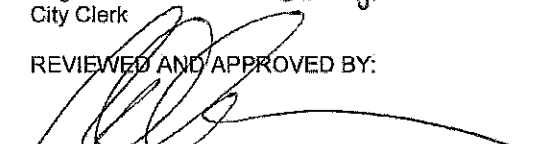
ATTEST:


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:

 09/29/2015
OFFICE OF THE CITY ATTORNEY