



Chartered 1708

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

**LEASE AGREEMENT
BETWEEN THE CITY OF ANNAPOLIS AND
[INSERT THIRD PARTY NAME]
FOR SEASONAL PARKLET SPACE**

1 **THIS LEASE AGREEMENT** (“Lease”) is made this ____ day of _____, 20__,
2 by and between the City of Annapolis, a municipal corporation of the State of Maryland (the “City”),
3 and [LESSEE NAME], a [Maryland] [_____] [corporation] [limited liability company]
4 [partnership] (the “Tenant”).

5 **WHEREAS**, the City is the fee simple owner of a parcel of land consisting of [one (1)]
6 [two (2)] [three (3)] [four (4)] marked parking space(s)[, marked as City parking space number(s)
7 _____,] and related roadways, located at approximately _____, Annapolis, Maryland
8 2140_ (collectively, the “Premises”); and

9 **WHEREAS**, the Tenant operates a business located adjacent to the Premises; and

10 **WHEREAS**, the Tenant wishes to lease the Premises, together with a right to use, in
11 common with others, adjoining sidewalks abutting the Premises, all as further depicted in **Exhibit**
12 **A** and **Exhibit B** attached hereto and incorporated herein, but excluding parking meters, bollards
13 and chains, and parking and traffic control signage; and

14 **WHEREAS**, the Tenant wishes to lease the Premises for the purpose of extending to the
15 outdoors its indoor business, products, service or commercial offerings, as part of the City’s
16 Seasonal Parklet Program, as further described in the “Seasonal Parklet Program Operational
17 Framework,” attached hereto and incorporated herein as **Exhibit C**; and

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

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

23 **1. Term.**

24 The City leases to the Tenant and the Tenant hereby leases from the City the Premises
25 for a Term commencing on _____, 20__, and the Lease shall continue through a term of [three
26 (3)] [six (6)] months (the “Term”), unless terminated earlier in accordance with the terms of this
27 Lease.

28 **2. Use of Premises.**

29 a. The Tenant may use and occupy the Premises during the Term of this Lease only
30 for the purpose of extending its indoor restaurant seating as outdoor dining in connection with its
31 business (the “Purpose”), and for no other purpose whatsoever.

32 b. The Tenant shall submit a photograph of the Premises to the City that clearly
33 depicts the applicable City parking space(s), and upon City approval, that photograph shall be
34 used as **Exhibit A** to this Lease.

35 c. The Tenant shall submit a site map or drawing of the Premises to the City that
36 clearly depicts all dimensions and applicable measurements of the proposed Premises space,
37 including those of the Safety Barriers (as defined herein) to be used (the "Site Map"), and upon
38 City approval, that Site Map shall be used as **Exhibit B** to this Lease.

39 d. The Tenant accepts the Premises in "as is" condition. The City makes no
40 representation or warranty with respect to the condition or state of the land, or the Premises, or
41 its fitness for any particular use, and the City shall not be liable for any latent or patent defect
42 thereon. Unless as otherwise expressly provided in this Lease, the City does not make, and
43 specifically disclaims, any representations, warranties, or covenants of any kind or character,
44 express or implied, with respect to the nature, condition, economical, functional, environmental,
45 or physical condition of the Premises. The Tenant represents and warrants to the City that: (1)
46 the Tenant is knowledgeable in matters of real estate or had an opportunity to consult with a real
47 estate professional; (2) the Tenant is relying solely on the Tenant's own expertise and/or the
48 expertise of the Tenant's consultants with respect to the Premises; (3) the Tenant shall assume
49 all risk that adverse matters, including, but not limited to, adverse physical and environmental
50 conditions, may not have been revealed through the Tenant's, or the Tenant's consultants',
51 inspections, tests, studies, and investigations of the Premises.

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

61 f. The Tenant shall comply with all requirements of the City Fire Marshal's Office in
62 its use of the Premises.

63 g. The Tenant shall comply with, and shall have sole responsibility and obligation for
64 complying with, all requirements of the Americans with Disabilities Act (ADA) in its use of the
65 Premises and any abutting public walkways including, but limited to any sidewalks, and any
66 private property entrances and exits.

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

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

73 j. The Tenant may install or otherwise place non-permanent decorative, architectural, or
74 vegetative elements to the Premises (collectively, the "Decorations"), and may also place its own
75 tables, chairs, benches, umbrellas, lighting fixtures, and similar items (collectively, the

76 “Furnishings”), as well as the Safety Barriers (as defined herein), on the Premises for use as
77 outdoor dining during the regular business hours of the Tenant’s business establishment. The
78 design of all such Decorations, Furnishings, Safety Barriers, and their layout within the Premise,
79 shall require a City Historic Preservation Commission (“HPC”) Certificate of Approval (“COA”).
80 The COA may be issued based on new or existing guidelines developed for outside dining areas
81 in addition to current guidelines for sidewalk cafes. The Tenant shall keep the Premises, any
82 Decorations, any Furnishings, and the Safety Barriers free of trash and debris, and in a clean,
83 safe, orderly and functioning (or properly stored) manner at all times.

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

87 l. The Tenant shall comply with Chapter 7.42 of Code of the City of Annapolis, as
88 may be amended, in its use of the Premises including, but not limited to, the Tenant shall not sell,
89 serve or allow consumption of alcoholic beverages on the Premises without obtaining the required
90 license from the Alcoholic Beverage Control Board, and further, alcoholic beverages shall be
91 served on the Premises only in conjunction with the service of food.

92 **3. Safety Barriers.**

93 a The Tenant shall be required to install safety barriers around those portions of the
94 Premises directly adjacent to any roadways (the “Safety Barriers”), in the sole determination of
95 the City, and in accordance with the City-approved Site Map and the terms and conditions of this
96 Lease.

97 b. To the extent available, the Tenant may request the use of City-owned white water
98 fillable crash safety barriers (“City Safety Barriers”) to use as its Safety Barriers. If available, then
99 the following installation process shall be followed:

100 1. The City shall deliver the requested number of City Safety Barriers, as may
101 be available, to the Premises.

102 2. The Tenant shall fill those City Safety Barriers with water and install them
103 on the Premises as specified in the City-approved Site Map.

104 3. After installation, the Tenant shall request City inspection of the City Safety
105 Barriers prior to any use of the Premises. The City Department of Public Works shall inspect to
106 ensure proper installation of the City Safety Barriers on the Premises, and the City Fire Marshal’s
107 Office shall inspect to ensure adequate roadway clearance for emergency vehicles.

108 4. At the end of the Lease Term, the Tenant shall remove all Decorations from
109 the City Safety Barriers, and then the City shall remove the City Safety Barriers from the Premises.

110 c. The Tenant accepts any City Safety Barriers that it uses in “as is” condition. The
111 City makes no representation or warranty with respect to the condition or state of City Safety
112 Barriers, or their fitness for any particular use, and the City shall not be liable for any latent or
113 patent defect thereon. The City does not make, and specifically disclaims, any representations,
114 warranties or covenants of any kind or character, express or implied, with respect to the nature,
115 condition, functional, or physical condition of the City Safety Barriers.

116 d. The Tenant may identify an alternative Safety Barrier option, other than the City
117 Safety Barriers, for use at the Premises in the Site Map for prior approval by the City. The Tenant

118 shall submit detailed dimensions, materials, and other safety information related to the alternative
119 Safety Barriers to the City for evaluation and approval as part of the Site Map approval. Such
120 alternative Safety Barriers shall comply with all applicable industry standards for safety barriers,
121 as well as any new or existing guidelines developed by the HPC for Safety Barriers used for
122 outside dining areas. At a minimum, City evaluation shall include evaluation by the City
123 Department of Public Works to ensure proper installation of the Safety Barriers on the Premises,
124 evaluation by the City Fire Marshal's Office to ensure adequate roadway clearance for emergency
125 vehicles, and evaluation by HPC and the City Department of Public Works to ensure compliance
126 with all applicable standards and guidelines.

127 e. Approval by the City or other regulatory agencies of the Site Map or any Safety
128 Barriers shall not in any way relieve the Tenant of the sole responsibility for the safety of the
129 Premises, and the safety of any invitees, guests, employees, or other persons, or personal
130 property, located thereon. The City's or any other regulatory agencies' review and/or approval of
131 the Site Map or any Safety Barriers shall not be construed to and shall not operate as a waiver of
132 any of the City's rights or remedies under this Lease or of any cause of action arising out of the
133 Tenant's responsibilities and obligations pursuant to this Lease. The Tenant shall be and shall
134 remain liable for management of the Premises in accordance with Paragraph 4 of this Lease and
135 security of the Premises in accordance with Paragraph 13 of this Lease.

136 **4. Tenant's Responsibilities for Management of the Premises.**

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

- 141 a. Oversight of all operations at the Premises;
- 142 b. Quality assurance for all aspects of the Premises' areas;
- 143 c. Development and assurance of proper security procedures for the Premises;
- 144 d. Coordination with adjacent property owners for deliveries to any properties
145 abutting or adjacent to the Premises;
- 146 e. Cooperation to allow City access pursuant to Paragraph 20(a);
- 147 f. Cooperation to allow access by any regulated utility company pursuant to
148 Paragraph 20(b);
- 149 g. Cooperation to allow access for private and City-contracted trash, recycling and
150 yard waste collection services pursuant to Paragraph 20(c);
- 151 h. Access through the Premises by certain private property owners pursuant to
152 Paragraph 20(d); and
- 153 i. Maintenance of Safety Barriers around the Premises as required and approved by
154 the City, including any needed coordination for moving/removal of such Safety
155 Barriers to provide any access to the Premises required by this Lease.

156

157 **5. Rent; Security Deposit.**

158 a. As rent for the Premises, the Tenant shall pay unto the City _____
159 _____ Dollars and _____ Cents (\$ _____) payable in [three (3)]
160 [six (6)] equal monthly payments of _____ Dollars and _____
161 _____ Cents (\$ _____) (collectively, the "Rent"), which Rent is equal to [(Downtown
162 Historic District) \$50.00] [(Arts District) \$30.00] [(West Annapolis) \$35.00] [(Eastport) \$19.00] per
163 day per marked parking space, as further described in Appendix B of **Exhibit C**. Each payment
164 shall be made promptly when due, in advance, on the first day of each month during the Term,
165 without deduction, setoff or counterclaim whatsoever, and without demand. All payments shall
166 be made payable to the "City of Annapolis" and shall be sent or delivered to the Finance Director,
167 Finance Department, City Hall, 160 Duke of Gloucester Street, Annapolis, Maryland 21401.

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

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

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

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

194 **6. Utilities/Services.**

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

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

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

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

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

211 **7. Tenant Equipment, Furnishings, Personal Property.**

212 The Tenant shall retain ownership of all of its trade and business equipment, furnishings
213 and personal property from time to time installed on the Premises, expressly excepting any City
214 Safety Barriers that remain the property of the City at all times. No fixtures, equipment or
215 furnishings may be attached or affixed to the exterior of the surrounding buildings. Except for any
216 Safety Barriers, the Tenant may remove any such fixtures, equipment or furnishings at any such
217 time during the Term and shall remove all of it prior to the expiration of the Lease. Removal shall
218 not cause any damage to the Premises. The Tenant shall pay for any damages it may cause as
219 Additional Rent. Any such personal property not removed at the expiration of the Term shall be
220 handled in accordance with Paragraph 24 of this Lease.

221 **8. Repairs and Maintenance.**

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

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

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

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

247 **9. Signs.**

248 The Tenant shall not to place or maintain any sign, billboard, marquee, awning,
249 decoration, placard, lettering, advertising matter or other thing of any kind, whether permanent or
250 temporary, on the Premises without first obtaining the City's written consent. The Tenant shall
251 maintain any sign, billboard, marquee, awning, decoration, placard, lettering, advertising matter
252 or other thing of any kind, as may be approved by the City, and shall repair and replace when
253 necessary to keep in good condition and repair at all times.

254 **10. Driveways, Footways and Parking Areas.**

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

259 **11. Non-Discrimination.**

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

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

265 **12. No Assignment or Sublease.**

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

270 **13. Security, Property Loss Damage.**

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

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

279 c. The City, its elected officials, appointees, directors, employees, agents, and
280 representatives (the "Indemnified Parties") shall not be liable for any damage to property of the
281 Tenant or of others located on the Premises or entrusted to its or their employees nor for the loss
282 of any property by theft or otherwise, nor for any injury or damage to persons or property resulting

283 from theft, casualty, vehicle accidents or collisions, acts of God, fire of every nature and type, the
284 accumulation of snow or ice, explosion, falling plaster, steam, gas, electricity, wind, water, rain or
285 snow which may overflow or leak or be discharged from any part of the Premises or from the
286 pipes, appliances or plumbing works of the same or from the street or subsurface or from any
287 other place, or from dampness, or from any other cause whatsoever; nor shall the City be liable
288 for any such damage caused by other persons in the Premises, or for damage caused by
289 operations in construction of any public or quasi-public works. All property of the Tenant kept or
290 stored on the Premises shall be so kept at the risk of the Tenant only and the Tenant shall
291 indemnify, defend and hold the Indemnified Parties harmless from any and all claims of every
292 kind arising out of damage to the same, including subrogation claims by the Tenant's insurance
293 carrier.

294 **14. Compliance with Laws.**

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

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

308 **15. Insurance.**

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

312 1. Commercial General Liability Insurance Policy, including contractual
313 liability and property liability insurance for the Premises, written on an occurrence basis, in
314 adequate quantity to protect against legal liability arising out of this Lease, but no less than
315 \$1,000,000.00 per person and \$2,000,000.00 per occurrence in the aggregate, using a Combined
316 Single Limit for bodily injury and property damage.

317 2. Workers' Compensation as required by Maryland law and, when required,
318 the U.S. Longshoremen's and Harbor Workers' Compensation Act, including standard Other
319 States coverage; Employers' Liability coverage with limits of at least \$100,000.00 each accident,
320 \$100,000.00 each employee disease, and \$500,000.00 disease policy limit.

321 b. At all times during the Term, at the Tenant's sole cost and expense, the Tenant
322 shall insure the contents of the Premises, including, without limitation, alterations, decorations,
323 furnishings, fixtures and equipment used or installed in the Premises by or on behalf of Tenant,
324 and all personal property of the Tenant in the Premises, against loss due to fire and other property
325 risks included in standard all risk coverage insurance policies, in an amount equal to the
326 replacement cost thereof and covering loss of income from such property risk. All insurance

327 carried by the Tenant hereunder shall be primary and not contributing with any insurance carried
328 by the City.

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

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

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

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

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

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

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

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

354 **16. Indemnification.**

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

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

368 regulations, or any other right of any person or entity in connection with the Tenant's use of the
369 Premises under this Lease.

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

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

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

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

383 **17. Impairment of the City's Title.**

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

392 **18. Liens and Encumbrances.**

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

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

401 **19. Taxes and Assessments.**

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

409 for payment of those installments falling due and payable during the Term, with appropriate pro-
410 ration in case of fractional years.

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

416 **20. Right of Entry.**

417 a. The City and its employees, representatives, agents, and servants, including any
418 builder or contractor employed by the City, shall have the absolute unconditional right at any and
419 all reasonable times, after not less than twenty-four (24) hours notice to the Tenant (except in the
420 case of an emergency where no such notice is required), to enter the Premises for any of the
421 following purposes: (1) to inspect the Premises; (2) to make such repairs and/or changes in the
422 Premises as the City may deem necessary or proper; (3) to access any City owned or maintained
423 utility; (4) to enforce and carry out any provision of this Lease; (5) to perform any snow removal
424 or related operations on the Premises and any adjacent roadways; (6) for any purpose relating to
425 the safety, protection or preservation of the Premises; (7) to allow for a City-approved special
426 event; or (8) for any other purpose related to the enforcement of this Lease.

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

432 c. The Tenant shall provide for regular access to the Premises, as applicable, for
433 both private and City-contracted trash and recycling services.

434 d. The Tenant shall provide for access through the Premises, as applicable, on an
435 as-requested basis for private property owners abutting to or adjacent to the Premises as relates
436 to larger delivery vehicles, moving vehicles, or construction vehicles.

437 **21. Reservation of Governmental Authority.**

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

440 **22. Defaults or Breach.**

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

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

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

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

457 4. Vacating or abandonment of the Premises by the Tenant, which vacating
458 or abandonment shall be automatically deemed to have occurred by the Tenant if there are no
459 Furnishings on the Premises for a period of ten (10) consecutive days at any point during the
460 Term of this Lease.

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

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

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

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

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

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

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

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

490 **23. Termination for Convenience.**

491 Either party may terminate this Lease for convenience, for any reason, and at any time by
492 providing fifteen (15) calendar days prior written notice to the other party. Any such termination
493 of this Lease shall not discharge the Tenant from any obligation it may have to the City by reason
494 of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the
495 circumstances, events or basis of which shall occur or arise) prior to such termination, whether
496 the same be known or unknown at the time of such termination. The City shall prorate the Rent,
497 and any Additional Rent, as of the date of termination for convenience.

498 **24. Vacating/Surrender of Premises.**

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

508 b. On the last day or earlier termination of this Lease, the Tenant shall comply with
509 the terms and conditions of Paragraph 7 of this Lease.

510 c. Within ten (10) calendar days of vacating, the City shall tour the Premises, with the
511 Tenant present if possible, to determine the condition of the Premises. Any items determined to
512 be in need of correction or repair shall be corrected or repaired by the City, and shall be invoiced
513 by the City as Additional Rent.

514 **25. Damage to Premises.**

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

526 **26. Modification.**

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

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

534 **27. Representations and Warranties.**

535 The Tenant represents and warrants to the City that:

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

540 b. The Tenant is authorized to execute, deliver and perform this Lease.

541 c. The Tenant shall not violate the order of any court or governmental authority or
542 breach any contract or other agreement by entering into this Lease.

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

546 e. The Tenant has been represented (or has had the opportunity to be represented)
547 in the execution of this Lease by independent legal counsel.

548 f. There exists no actual or potential conflict of interest between its performance
549 under this Lease and its engagement or involvement in any other agreement, or personal or
550 professional activities. In the event such conflict or potential conflict arises during the Term of
551 this Lease, the Tenant shall immediately advise the City in writing thereof.

552 g. The representations set forth in the Lease shall be true and valid throughout the
553 Term.

554 **28. Access to Records.**

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

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

565 **29. Remedies Cumulative and Concurrent.**

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

571 power and remedy given to the City may be exercised from time to time as often as may be
572 deemed expedient by the City.

573 **30. Waiver of Remedies for Breach or Default.**

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

579 **31. Landlord-Tenant Status.**

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

583 **32. Binding Effect.**

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

586 **33. Governing Law.**

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

590 b. The parties hereby waive their right to a jury trial in all actions initiated as pertains
591 to this Lease.

592 **34. Recitals.**

593 The Recitals of this Lease are incorporated into this Lease.

594 **35. Severability.**

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

598 **36. Survival.**

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

601 **37. Time is of the Essence.**

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

603 **38. Authorization.**

604 This Lease is authorized by the City Council pursuant to Ordinance O-____-____.

605 **39. Counterparts.**

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

609 **40. Notice.**

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

614 To the City: City Manager
615 160 Duke of Gloucester Street
616 Annapolis, Maryland 21401
617

618 With a Copy to: City Attorney
619 160 Duke of Gloucester Street
620 Annapolis, Maryland 21401
621

622 To the Tenant: _____
623 _____
624 _____
625 _____
626

627
628
629
630
631
632
633
634
635
636
637
638
639
640

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

644
645 WITNESS: [LEGAL NAME OF TENANT]
646
647
648 _____ By: _____
649 Name: _____ (Seal)
650 Title: _____
651

652
653 ATTEST: CITY OF ANNAPOLIS
654
655
656 _____ By: _____
657 Regina C. Watkins-Eldridge, MMC, Gavin Buckley, Mayor (Seal)
658 City Clerk

659
660 APPROVED FOR SUFFICIENT APPROPRIATIONS
661 AND AVAILABILITY OF FUNDS:
662
663 _____
664 Joanna D. Dickinson, Director
665 Finance Department
666 Source of Funds: _____
667

668 APPROVED FOR FORM AND LEGAL SUFFICIENCY:
669
670
671 _____
672 Office of Law
673 D. Michael Lyles, City Attorney
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690

EXHIBIT A
PREMISES – PHOTOGRAPH OF PARKING SPACE(S)

691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740

741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790

EXHIBIT B
PREMISES – SITE MAP/DRAWING

791
792
793
794
795

EXHIBIT C
SEASONAL PARKLET PROGRAM
OPERATIONAL FRAMEWORK

Seasonal Parklet Program Operational Framework

1. **Three or Six month parklet lease term during the warm months** – Businesses interested in facilitating an Outside Dining experience within a city owned parking space should be required to enter into a lease agreement with the City of Annapolis. The preferred lease term should be six months but a three-month lease option should also be available within the six month period. Businesses would not be able to lease more than two parklets at a time on public streets.

2. **The Seasonal Parklet request process will include an application and a:**
 - a. Financial Assessment
 - b. Feasibility Assessment
 - c. Safety Assessmentprior to the execution of a lease. Please see the **Addendum A** for more information.

3. **Utilize a Dynamic Pricing Model for the daily lease rate** – The Seasonal Parklet lease rate will be determined in part by the area of the City in which the parklet is located. Prices will be adjusted annually based upon the percentage differential between the December combined average commercial price per square foot in Downtown versus other parts of the City. For example:
 - Let's say the average commercial price per square foot is \$25 in Downtown and \$20 in Eastport at the end of December. Therefore, there is a 20% difference in price between the two neighborhoods.
 - Let's also assume that it has been determined by the City that the Downtown Seasonal Parklet lease rate will be \$50 per day the following Spring.
 - If a parklet will be constructed in Eastport on April 15 for six months, the lease rate of that space would be \$40 per day (20% discount based upon the market rate price per square foot)
 - A Dynamic Pricing Model based upon the combined average commercial price per square foot in Annapolis for December 2021 has been included as **Addendum B**.

4. **Incorporate Capital Facilities fees into the Parklet lease rate** – The Capital Facilities fee is designed to cover the additional public water and sewer costs to the City associated with the expanded footprint of a restaurant. This one-time fee is \$6500 for ten seats. An Annapolis parking space turned into a Seasonal Parklet can also accommodate roughly ten seats. Currently Sidewalk Café permit holders have to pay \$3250 which assumes that their outside dining will operate six months out of the year. This same rate equates to \$541.66 per month or \$4.51 per day. Incorporating roughly \$5.00 per day for a Capital Facilities charge for restaurants with Seasonal Parklets seems reasonable and aligns with what is being charged to Sidewalk Café permit holders. The proceeds from this fee should go directly into the Annapolis Infrastructure account. This fee would be sourced from the monthly lease rate. It **would not** be added to that rate.

Appendix A

Steps to Follow to Request Seasonal Parklets and to Rent Public City Property:

1. Complete an application, which includes identifying the requested timetable, space number (if relevant), closest street address, and providing a picture.
2. The application is routed to the following:
 1. Annapolis Parking (443-648-3087) to provide a **Financial Assessment** and determination of the cost of renting public parking spaces.
 2. Public Works to provide a **Feasibility Assessment**
 3. Fire Marshal's Office to provide a **Safety Assessment**
 4. Historic Preservation Office to facilitate a pre-application meeting for Historic District restaurants
2. After the Financial Assessment has been completed and the request has been determined to be feasible and safe comments will be requested from the other city agencies.
3. After determining that there are no significant objections or concerns from the remaining city agencies, the Office of Law will provide the applicant with a lease agreement.
4. *The City Council would have final approval of the lease.
5. Following the lease approval of the City Council a separate Historic Preservation approval would also be required before outside dining operations could begin within the Historic District.

*Unless a different process is approved by the City Council.

Appendix B

Annapolis City Commercial District	2021 Q4 Ave SF Rate	%	Parklet Rate
Main Street Program Area	\$48.76	100%	\$ 50.00
Arts District	\$29.72	61%	\$ 30.48
West Annapolis	\$34.92	72%	\$ 35.81
Eastport	\$18.63	38%	\$ 19.10
Design District (DD)	\$17.00	35%	\$ 17.43
Upper West (minus DD)	\$16.19	33%	\$ 16.60
Forest Dr	\$19.93	41%	\$ 20.44