

CITY OF ANNAPOLIS MARKET HOUSE LEASE AGREEMENT

THIS MARKET HOUSE LEASE AGREEMENT (this "Lease") is made as of the ____ day of _____, 2018 (the "Effective Date") by and between **CITY OF ANNAPOLIS**, a municipal corporation of the State of Maryland (the "City") and **NEW MARKET HOUSE, LLC**, a Maryland limited liability company, its successors and permitted assigns (the "Tenant").

WHEREAS, the City is the fee simple owner of the property known and described as 25 Market Space, Annapolis, Maryland 21401 (the "Property"), which is improved by the "Market House" (the "Building"), all as depicted on **Attachment A attached hereto and incorporated herein**; and

WHEREAS, the Tenant desires to lease the entirety of the Building containing approximately and collectively five thousand three hundred twenty-six (5,326) square feet, along with its common areas, including, but not limited to, restrooms, hallways, doorways, public conveniences, service areas, entrance ways and interior walkways (collectively, the "Premises"), together with a right to use, in common with others, adjoining sidewalks extending to edge of curb on the three (3) sides of the Building abutting Market Space, and extending a distance of six (6) feet beyond the edge of the eave along the side of the Building adjoining Hopkins Plaza (as defined herein), and including an outdoor seating area on the sidewalk adjacent to the Building (collectively, the "Adjoining Areas"), but excluding parking meters, bollards and chains and parking and traffic control signage; and

WHEREAS, the Tenant wishes to lease the Premises from the City, and the City desires to lease the Premises to Tenant, for the purpose of operation of a market house as described in § 7.28.020 of the Annapolis City Code; and

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

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

1. Demise of Premises.

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

2. Term.

(a) This Lease shall be for a term (the "Term") commencing on the Effective Date and expiring on June 30, 2023, unless renewed or sooner terminated as otherwise provided by this Lease. For purposes of this Lease, a "year" of the Lease is the twelve (12) month period ending on June 30th, except that the first year of this Lease shall begin on the Effective Date and end on the next June 30th that is at least twelve (12) months following the Effective Date.

(b) Provided that the Tenant is not otherwise in default hereunder as defined in Section 17 and wishes to continue to occupy the Premises, the Tenant shall have the right in its sole discretion to renew this Lease for one (1) successive term of five (5) years upon the same

1 terms and conditions herein (a “Renewal Term”) **only if** all of the following terms are complied
2 with no later than six (6) months prior to the end of the Term:

3 (i) Came into compliance for any and all City and Anne Arundel County municipal
4 infractions received against the Premises during the Term, or timely filled a legal appeal or
5 requested a trial for any and all such City and Anne Arundel County municipal infractions;

6 (ii) Came into compliance for any and all civil and/or criminal violations received
7 against the Premises during the Term, or timely filled a legal appeal or requested a trial for any
8 and all such violations; and

9 (iii) Maintained an exemption status for the Tenant’s leasehold interest in the
10 Premises with the Maryland State Department of Assessments and Taxation as a “public
11 market” throughout the Term.

12 If the Tenant fails to comply with all of these terms prior to each Renewal Term, then the
13 Lease shall automatically expire at the end of the then current Term or Renewal Term.

14 c. Not less than six (6) months before the end of the Lease Term, the Tenant shall
15 tender Notice to the City of its intention not to renew this Lease, or submit a request in writing to
16 exercise its right to renew this Lease in accordance with § 6.04.220 of the City Code.

17 d. Any additional renewals of this Lease shall be mutually agreed upon through a
18 written amendment to this Lease.

19 **3. Condition of Premises.**
20

21 Within ten (10) calendar days after the Effective Date, Tenant shall inspect the Premises
22 and provide the City with Notice of any conditions in the Premises that Tenant reasonably finds
23 objectionable. The City shall have no further obligation to install or perform any improvements
24 to the Premises after the Effective Date, except as the City and Tenant agree as a result of
25 Tenant’s inspection. If the City does not agree to any reasonable improvements requested by
26 Tenant, then Tenant, within ten (10) calendar days after receiving the City’s response, may
27 terminate this Lease without further obligation and any deposit monies paid shall be returned to
28 Tenant. Except for any improvements agreed to by the City, the Premises shall be delivered to
29 the Tenant in “AS IS, WHERE IS” condition. The Tenant acknowledges that it has inspected the
30 Premises, and that the Tenant’s occupancy of the Premises shall constitute acceptance thereof
31 as complying with all obligations of the City with respect to the condition, order and repair
32 thereof except for improvements that the City agreed to make as a result of Tenant’s inspection.
33 The Tenant, at its sole cost and expense, shall perform any additional work necessary to
34 prepare the Premises for the Tenant’s use and occupancy as provided by Sections 10 and 11.
35

36 **4. Permitted Use.**
37

38 (a) The Tenant shall use and occupy the Premises for the purpose of operation of a
39 public market house as described in § 7.28.020 of the Annapolis City Code or successor code,
40 and for no other purposes, and in accordance with the Tenant’s “Business Summary”, attached
41 hereto and incorporated herein as **Attachment B**. The Business Summary shall only be
42 modified through a written amendment approved by the Tenant and City Council. The Tenant
43 shall be entitled to use the Alfred A. Hopkins Plaza (the “Hopkins Plaza”) adjacent to the
44 Property, on a non-exclusive basis for purposes of conducting an Open Air Market as described
45 in § 7.28.010 of the Annapolis City Code, with the prior written approval of the City, which

1 approval may be altered or revoked at any time. The Tenant shall not block public access to the
2 Kunta Kinte Memorial situated in Hopkins Plaza. Blocking such public access may result in
3 revocation of the Tenant's right to use Hopkins Plaza.

4 (b) The Tenant shall not use or occupy the Premises or the Property, or exercise its
5 rights under this Lease, in any manner which would violate, or cause the City to violate, the
6 Deed of Preservation Easement dated December 17, 2015, attached to this Lease as
7 **Attachment C**, or any applicable law, including but not limited to the Americans With Disabilities
8 Act and any Environmental Regulations (defined in Section 4(d)), or in a manner which may
9 constitute a nuisance or a potential fire hazard. The City makes no representation as to the
10 fitness of the Premises or satisfaction of zoning, historic district, historic preservation and all
11 other government regulations and requirements with regard to the Tenant's proposed use of the
12 Premises as contemplated herein.

13 (c) The Tenant shall not commit or suffer to be committed any waste or nuisance
14 upon the Premises. The Tenant, at the Tenant's sole cost and expense, shall comply with and
15 observe (i) all ordinances, rules, regulations and requirements of all municipal, state and federal
16 and other applicable governmental authorities hereafter in force pertaining to the Premises and
17 the use thereof, including but not limited to any Environmental Regulations; and (ii) all
18 requirements and rules and regulations of any applicable insurance rating agency. Nothing in
19 this sub-section shall require the Tenant to comply with any City law or regulation enacted after
20 the Effective Date that unconstitutionally impairs the Tenant's contractual rights under this
21 Lease

22 (d) The Tenant shall not use, generate, place, store, release, discharge, transport or
23 otherwise dispose of Hazardous Substances in, on or under the Premises except in strict
24 accordance with environmental, federal, state or local laws and regulations concerning the
25 environment ("Environmental Regulations"). If the Tenant breaches the foregoing, the Tenant
26 shall give the City Notice (as defined in Section 27) of such breach and at the City's option, the
27 City (at the Tenant's expense) or the Tenant shall immediately undertake remedial action in
28 accordance with Environmental Regulations. The Tenant shall indemnify, defend and hold the
29 City, its elected officials, appointees, directors, employees, agents, and representatives
30 harmless from and against, and shall reimburse the City for, all claims, demands, causes of
31 action, losses, damages, liabilities, costs and expenses (including reasonable attorney's,
32 consultant's and expert's fees) asserted against or incurred by the City arising out of the
33 Tenant's breach of any warranty or representation or failure to comply with or perform any
34 covenant, agreement or obligation set forth in this Section 4(d). The term "Hazardous
35 Substance", as used in this Lease, shall mean any product, equipment, underground storage
36 tank, material, waste or substance (i) which requires special handling, investigation, removal,
37 transportation, closure, notification or other remedial action under any Environmental
38 Regulation, (ii) which is or becomes defined as a hazardous waste, hazardous material,
39 hazardous substance, pollutant, toxic substance or contaminant under any Environmental
40 Regulation, (iii) which is or becomes regulated or governed by any Environmental Regulation or
41 by any governmental authority, agency, department, commission, board or instrumentality of
42 any governmental entity, or (iv) which causes or threatens to cause an erosion, contamination,
43 drainage or nuisance problem on the Premises or to adjacent property, public roads or rights of
44 way or which poses or threatens to pose a hazard to the health or safety of persons on or about
45 the Premises or adjacent property. The provisions of this Section 4(d) shall survive the
46 expiration or earlier termination of this Lease.

47 (e) Tenant shall continuously, actively and diligently operate the Market House
48 throughout the whole of the Premises in accordance with the Business Summary. Tenant shall
49 be in default of the Lease if more than twenty percent (20%) of the gross floor area of the
50 Premises used for the sale of food, beverage and goods ceases to be in actual use for that
51 purpose for more than three (3) consecutive months, except for reason of fire or other casualty

1 covered by Section 19 of this Lease. For purposes of this sub-section, floor area used for public
2 restrooms shall not be included in the computation of "gross floor area."

3 (f) Tenant shall not commit waste or perform any acts or carry on any practices
4 which may injure the Building or Premises.

5 (g) Notwithstanding anything else in this Lease, the City reserves the right to
6 maintain, repair, replace and relocate the City's bollards, chains, parking meters and signage
7 located on or in the sidewalks located on the Property.
8

9 **5. Tenant's Responsibilities for Management of the Premises and the Building.**

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

14 (i) Oversight of all operations at the Premises;

15 (ii) Quality assurance for all aspects of the Premises' common areas, and the
16 interior of the Building;

17 (iii) Procurement at Tenant's expense of all Building service contracts,
18 including, but not limited to, custodial, interior and exterior window washing/cleaning, refuse and
19 recycling collection and disposal, music system, grease collection, grease trap cleaning, and
20 pest control contracts;

21 (iv) Determination of appropriate seasonal operating and extended hours,
22 and special holiday hours for the Premises as reflected in Tenant's Business Summary;

23 (v) Development and assurance of proper security procedures for the
24 Premises; and

25 (vi) Coordination of Building repair, maintenance and alteration requirements
26 in coordination with and approval of the City as may be required in Sections 10 and 11.

27 (b) The Tenant shall be responsible for establishing and maintaining regular and
28 commercially reasonable business hours as reflected in Tenant's Business Summary, and shall
29 provide a written copy of such hours to the City for its records in a timely manner. The City
30 reserves the right to request the Tenant to alter or change the business hours, at any time,
31 provided that the City substantiates a reasonable justification for that request that does not
32 conflict with the provisions of this Lease. However, the Tenant shall not be required to accede
33 to any such City request without an amendment to this Lease.
34

35 (c) The Tenant shall have the right to impose such reasonable regulations governing
36 the use of the Premises by the public, except that the public restrooms must stay open and
37 accessible to the public during Tenant's business hours, and shall provide a written copy of
38 such regulations to the City for its records in a timely manner. The City reserves the right to
39 request the Tenant to alter or change any rule enacted pursuant to this Section, at any time,
40 provided that the City substantiates a reasonable justification for that request that does not
41 conflict with the provisions of this Lease. However, the Tenant shall not be required to accede
42 to any such City request without an amendment to this Lease.
43

44 **6. Security Deposit; Rent.**

45 (a) No later than the Effective Date, the Tenant shall deposit with the City's Finance
46 Director, 160 Duke of Gloucester Street, Annapolis MD, 21401, the amount of Eight Thousand
47 Dollars and No Cents (\$8,000.00) (the "Security Deposit"). The City shall have no obligation to
48 pay any interest on the Security Deposit, and may commingle it in an account with other funds.
49 The City, at its option, may apply any part of the Security Deposit towards the payment of
50 outstanding amounts due under this Lease, provided always that the Tenant's liability under this
51

1 Lease shall not thereby be discharged. Upon any uncured monetary default, the City may
2 request, and the Tenant shall be obligated to deposit, additional security to secure the Tenant's
3 performance under this Lease within ten (10) business days to restore the Security Deposit to
4 its original amount. If not used, the Security Deposit shall be returned to the Tenant within thirty
5 (30) calendar days after the Tenant vacates the Premises in accordance with Section 22.

6 (b) Commencing on July 1, 2018 and continuing through June 30, 2023, the Tenant
7 shall pay to the City "Basic Rent" in equal monthly installments of Eight Thousand Dollars and
8 No Cents (\$8,000.00). At the beginning of any Renewal Term, the next Renewal Term's monthly
9 Basic Rent shall be calculated at an amount equal to the previous term's monthly Basic Rent
10 multiplied by 1.05%, so that each subsequent Renewal Term's Basic Rent increases by five
11 percent (5%).

12 (c) Notwithstanding Section 6(b), Tenant shall pay no Basic Rent from the Effective
13 Date through December 31, 2018, and then shall pay Basic Rent in equal monthly installments
14 of Four Thousand Dollars (\$4,000.00) for a period of January 1, 2019 through June 30, 2019.

15 (d) In addition to Basic Rent, the Tenant shall pay to the City annually "Performance
16 Rent" based upon a percentage of Tenant's annual gross revenues during the Lease year. The
17 formula for determining Tenant's Performance Rent is specified in **Attachment D**. Tenant
18 agrees to pay each year's Performance Rent, without demand, deduction, recoupment or set-
19 off, not later than ninety (90) calendar days following the end of the Lease year and in
20 accordance with Section 26(b). Tenant shall submit with each payment of Performance Rent
21 such supporting documentation as the City reasonably shall require to document gross sales by
22 Tenant and any subtenants and the computation of the payment. Tenant shall implement
23 procedures reasonably satisfactory to the City to ensure timely and proper recording and
24 accounting of all sales by Tenant and subtenants.

25 (e) Basic Rent shall be payable in monthly installments without demand, deduction,
26 recoupment or set-off (except as otherwise provided by this Lease), in advance on the first day
27 of each and every month.

28 (f) As used in this Lease, "Additional Rent" shall mean all amounts, costs and
29 expenses other than Basic Rent and any Performance Rent which the Tenant assumes or
30 agrees to pay to the City as provided by this Lease. In the event of nonpayment of any amount
31 of Additional Rent, the City shall have all of the rights and remedies provided for in the case of
32 nonpayment of Basic Rent. Additional Rent shall include, but not be limited to, bills or invoices
33 resulting from the following: taxes owed by Tenant but billed to the City as discussed in Section
34 7(a); jointly metered utilities as discussed in Section 9(a); Tenant's failure to make capital
35 repairs as discussed in Section 10(d); Tenant's failure to make repairs as discussed in Section
36 15(a); Tenant's failure to perform as discussed in Section 16; damages from Tenant's default as
37 discussed in Section 17(e); Tenant's abandoned personal property as discussed in Section
38 22(b); repairs needed at expiration of this Lease as discussed in Section 22(c); and damage to
39 the Premises or City property as discussed in Section 25(d). The Tenant shall pay Additional
40 Rent at such time or times as provided in this Lease or, if not otherwise provided, on the first
41 day of each and every month commencing on the Effective Date, and the Tenant's obligation to
42 pay Additional Rent shall survive the expiration or termination of this Lease. Basic Rent,
43 Performance Rent and Additional Rent are referred to collectively in this Lease as "Rent."

44 (g) All payments or installments of Rent hereunder (including attorneys' fees) shall
45 be paid to the City's Finance Director, 160 Duke of Gloucester Street, Annapolis MD, 21401.
46 Time is of the essence with respect to the Tenant's obligations to pay Rent. Any payment by
47 the Tenant or acceptance by the City of a lesser amount than is due from the Tenant to the City
48 shall be treated as a payment on account. The acceptance by the City of a payment for a lesser
49 amount with an endorsement or statement, or upon any letter accompanying such payment, that
50 such lesser amount is payment in full, shall be given no effect, and the City may accept such

1 payment without prejudice to any other right or remedy which the City may have against the
2 Tenant, unless otherwise agreed in writing by both parties.

3 (h) Except as otherwise expressly provided in this Lease, and except as permitted
4 by Section 17 for default by the City, no abatement, refund, offset, counterclaim, recoupment,
5 diminution or any reduction of Rent, charges or other compensation shall be claimed by or
6 allowed to Tenant, or any person claiming under it, under any circumstances, whether for
7 inconvenience, discomfort, interruption of business, interruption of utility services or otherwise,
8 arising from the making of alterations, changes, additions, improvements or repairs to the
9 Building or the Premises, by virtue or because of any present or future governmental laws,
10 ordinances, or for any other cause or reason.

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12 **7. Taxes.**

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14 (a) The Tenant shall pay all impositions including all applicable state, county and
15 City taxes (including real estate, ad valorem, personal property, sales, use, and occupancy
16 taxes), and assessments of any kind and nature whatsoever, including all interest and penalties
17 on them, which shall or may accrue or be incurred during the Term and any Renewal Term of
18 this Lease. If any such impositions are billed to the City, Tenant shall pay such impositions to
19 the City as Additional Rent within thirty (30) calendar days after the City gives Tenant a
20 statement therefor with supporting documentation. The Tenant shall pay all such taxes and
21 assessments before any fine, penalty, interest, or cost may be added for nonpayment, and shall
22 furnish to the City, on request, official receipts or other satisfactory proof evidencing such
23 payment. If any tax or assessment is payable in installments over a period of years, the Tenant
24 shall be liable only for payment of those installments falling due and payable during the Term
25 and any Renewal Term, with appropriate pro-ration in case of fractional years. If Tenant's
26 leasehold estate under this Lease becomes subject to taxation to the Tenant, City agrees to
27 modify this Lease to provide a credit against Basic Rent for the amount of City real property
28 taxes paid by Tenant.

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

34
35 **8. Insurance.**

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37 (a) At all times during the Term and any Renewal Term, at the Tenant's sole cost
38 and expense, the Tenant shall obtain and keep in full force and effect a policy of comprehensive
39 general public liability insurance on an "occurrence" basis, naming the City, its elected officials,
40 appointees, directors, employees, agents, and representatives as additional insureds with
41 respect to the Premises and the business of the Tenant in, on, within, from or connected with
42 the Premises, for which the limits of liability shall be not less than Three Million Dollars
43 (\$3,000,000.00) with respect to injuries and/or death to any number of persons arising out of
44 one accident; One Million Dollars (\$1,000,000.00) with respect to injury and/or death of any one
45 person; and in the amount of not less than Three Million Five Hundred Thousand Dollars
46 (\$3,500,000.00) with respect to the destruction of or damage to property, including the
47 Premises. Such insurance policy shall be issued by an insurance company approved by the
48 City. Even though the City, its elected officials, appointees, directors, employees, agents, and
49 representatives are named additional insureds on the policy provided by the Tenant, such policy
50 must specifically provide for payment of damage or loss to the City when the damage to the
51 City, to its property or to its agents, contractors or employees is caused by the negligent or other

1 wrongful act of the Tenant or its contractors, employees, agents, licensees or invitees. At the
2 City's request, made no more frequently than the commencement of each Renewal Term, the
3 Tenant shall increase the amounts of coverages required by this Section 8(a) to amounts
4 reasonably satisfactory to the City taking into account inflation, changes in risks being insured,
5 and changes in commercially reasonable standards for insurance of such types.

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

14 (c) At all times during the Term and any Renewal Term, the Tenant shall maintain, at
15 the Tenant's sole cost and expense, worker's compensation insurance in statutory limits.

16 (d) At all times during the Term and any Renewal Term, the Tenant shall maintain, at
17 the Tenant's sole cost and expense, a flood insurance policy for all furnishings, fixtures and
18 equipment in the Premises in accordance with the U.S. Government's National Flood Insurance
19 Program, for which the limits of liability shall be not less than One Million Dollars
20 (\$1,000,000.00), and naming the City, its elected officials, appointees, directors, employees,
21 agents, and representatives as additional insureds.

22 (e) The Tenant hereby waives all claims for recovery from the City for any loss or
23 damage insured under valid and collectible insurance policies to the extent of any recovery for
24 loss insured thereunder. The policy required to be kept in force by the Tenant as provided by
25 Section 8(a) shall contain provisions whereby the insurer waives any right of subrogation
26 against the City and its contractors, agents and employees. Neither the issuance of such policy
27 or the minimum limits of coverage specified in Section 8(a) or elsewhere in this Lease shall limit
28 or restrict, or be deemed to limit or restrict in any way, the Tenant's responsibility or liability
29 arising out of its covenants under the provisions of this Lease. The insurance protection
30 afforded by the Tenant's insurance policy must be written as primary coverage and not as
31 contributing with or in excess of any coverage which the City may carry.

32 (f) Before the Tenant occupies the Premises, the Tenant shall deliver to the City one
33 (1) or more original certificates of Tenant's insurance policies required to be maintained by this
34 Section 8, together with true and complete copies of such policies and of receipts or other
35 evidences of the pre-payment of its premiums for not less than one (1) year in advance.
36 Thereafter, during the entire Lease Term and any Renewal Term, and at least thirty (30)
37 calendar days before each expiration date of each such policy, the Tenant will similarly deliver
38 an original certificate of the renewal policy to the City together with true and complete copies of
39 the renewal policies and of receipts or other evidence of the prepayment of the annual
40 premiums. Each certificate of the Tenant's insurance policies must be reasonably acceptable to
41 the City in form, substance and detail and contain an agreement by the insurer or the Tenant
42 that it will not cancel or amend the policy without giving at least thirty (30) calendar days prior
43 Notice to the City.

44 (g) The insurance required to be maintained by the Tenant by this Section 8 may be
45 placed under one or more "blanket policies;" provided, however, that the insurer named in each
46 such blanket policy must certify to the City's satisfaction that the coverage required to be
47 provided by the Tenant is separately identified and is actually provided and available to protect
48 the Premises within the terms of the blanket policy.

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1 **9. Utilities.**
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3 (a) The Tenant shall be solely liable to pay all costs and expenses of electricity,
4 water, sanitary sewer, heating, natural gas, air conditioning, and any other utility service used at
5 the Premises, and for exterior lighting of the Building. The Tenant shall pay all such costs and
6 expenses either directly to the providers of such services if the Building is separately metered
7 therefor or, if not separately metered, to the City as Additional Rent, based on the City's
8 reasonable proration of such costs and expenses, within thirty (30) calendar days after the City
9 gives Tenant a statement therefor with supporting documentation. Under no circumstances shall
10 the City be liable to Tenant in damages or otherwise (i) if any utility shall become unavailable
11 from any public utility company, public authority or any other person or entity supplying or
12 distributing such utility, or (ii) for any interruption in service of electricity, water, sewer, gas, heat,
13 ventilation, or air conditioning caused by fire, accidents, strikes, breakdowns, necessary
14 maintenance, alterations, repairs, acts of God or any other causes; and, except as permitted by
15 Section 19, the foregoing shall not constitute a termination of this Lease. Tenant's obligation to
16 pay Basic Rent to the City shall continue and be unabated throughout such interruption or
17 unavailability, but Tenant may obtain business interruption insurance to protect against such
18 interruption or unavailability.

19 (b) Tenant understands and acknowledges that the heating, cooling and make-up air
20 capacity of the Premises is provided by a geothermal system (the "Geothermal System"); and
21 that the Geothermal System provides approximately forty (40) tons of capacity, consisting of
22 approximately thirty (30) tons of cooling and ten (10) tons of dehumidification, of which five (5)
23 tons can be used as cooling. This consists of approximately twenty-five and one-half (25.5) tons
24 for the Building base load and people load; and the remaining fourteen and one-half (14.5) tons
25 of capacity is available for Tenant's installed-equipment heat load. Tenant further acknowledges
26 that the efficiency and sufficiency of the cooling portion of the Geothermal System is dependent
27 upon Tenant not exceeding the equipment heat load and Tenant keeping all doors to the
28 Building shut except when people are entering or leaving the Premises. Tenant agrees to use
29 and operate the Building and Premises in a manner consistent with this sub-section. If the
30 efficiency and sufficiency of the Geothermal System are not adequate to provide comfortable
31 all-season temperatures and humidity in the Premises for Tenant and its customers, Tenant
32 may supplement, replace or upgrade the Geothermal System in accordance with Section 11(a)
33 of this Lease, and thereafter maintain, replace and repair, at its sole cost and expense, any
34 supplementation, replacement or upgrade to the Geothermal System as necessary to provide
35 comfortable all-season temperatures and humidity in the Premises for Tenant and its
36 customers. Any supplementation, replacement or upgrade of the existing Geothermal System
37 shall be subject to prior written approval by the City, which shall not be unreasonably denied,
38 conditioned or delayed. Any equipment, fixtures, devices, product designs, parts or
39 indispensable accessories replaced, upgraded or otherwise installed pursuant to this sub-
40 section shall, upon the installation thereof, become and be the property of the City and shall
41 remain upon and be surrendered with the Premises at the termination or expiration of this
42 Lease.

43 (c) The Tenant shall be solely liable to pay all costs and expenses for any telephone,
44 internet, cable, and similar services, including any necessary telecommunications build-out of
45 the Premises. The Tenant shall not arrange or pay for any build-out of any telecommunications
46 that penetrates the exterior wall of the Building, attaches to the exterior of the Building or
47 impacts the columns in the Building without the prior written consent of the City.

48 (d) The Tenant shall be solely liable to pay all costs and expenses for any operating
49 expenses, housekeeping services and janitorial work that Tenant reasonably deems necessary
50 for the operation of the Premises, including, but not limited to, cleaning any and all bathroom
51 facilities, cleaning windows and floors, and all other general and/or routine janitorial

1 maintenance.

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3 **10. Repairs and Maintenance.**
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5 (a) The Tenant, at its sole cost and expense, shall maintain, repair and replace as
6 necessary, and keep, in a clean, safe and proper operating condition, the entire interior and,
7 except as otherwise provided in Section 10(d), the exterior of the Premises, including but not
8 limited to all windows, doors and glass, all machinery, equipment, lighting, sump pumps, grease
9 traps, controls, mechanical, electrical, plumbing, inventory and appurtenances thereof used by
10 or for the benefit of the Tenant. The Tenant shall be required to perform regular maintenance of
11 the Geothermal System for the Premises, including heating, ventilating and air conditioning
12 equipment and appurtenances thereof and any supplementation, replacement or upgrade
13 approved pursuant to Section 9(b), and to include changing filters but not repairs or replacement
14 of the Geothermal System existing as of the Effective Date or any part or component thereof,
15 including any and all elements of the Geothermal System. The Tenant shall keep the Premises
16 in good order and repair, and in a safe and clean condition, free of dirt, trash, pests, and in all
17 respects in such manner as to comply with all applicable laws and regulations. Notwithstanding
18 the foregoing, the City shall be responsible for the maintenance, repair and replacement of
19 pipes and equipment located below the concrete floor of the Premises, except for grease traps,
20 and unless necessitated by the negligence or willful wrongful act or omission of Tenant, its
21 agents, contractors, invitees or employees. The Tenant shall also maintain and keep, in a
22 clean, safe and proper condition, the Adjoining Areas, and shall arrange for removal of ice and
23 snow from the Adjoining Areas when reasonably necessary. Tenant shall not take any action to
24 interfere with, damage or destroy any of the City's bollards, chains, parking meters or signage
25 located on or in the Adjoining Areas that are Tenant's responsibility to maintain.

26 (b) At the Tenant's sole cost and expense, Tenant shall enter into and maintain
27 during the entire Term and any Renewal Term service contracts with reputable third-party
28 contractors licensed and insured to maintain and monitor all mechanical, electrical, plumbing,
29 HVAC, and other systems and equipment at the Premises for which Tenant is responsible as
30 provided by Section 10(a), including but not limited to Building operating systems and
31 equipment, as described in Section 10(a). All such service contracts and contractors must (i)
32 comply with all applicable manufacturer's recommendations, (ii) be terminable without penalty
33 upon thirty (30) calendar days prior Notice, and (iii) be approved by the City prior to the Tenant
34 entering into the service contracts, which approval shall not be unreasonably withheld.

35 (c) The Tenant, at its sole cost and expense, shall take commercially reasonable
36 precautions and measures to protect the Premises, including the Building and any personal
37 property therein, from flooding (collectively, "Flood Measures") prior to an impending weather
38 event reasonably expected to have flooding potential. Tenant shall coordinate with the City and
39 its staff on other protective measures to be taken, except that Tenant may not make any
40 physical alteration to the Building without the prior written approval of the City, which shall not
41 be unreasonably withheld.

42 (d) The City shall (i) maintain, repair, replace and renew the roof, foundation,
43 exterior walls, and sprinkler, fire suppression and fire alarm systems (including any approved or
44 required fire systems installed pursuant to Section 11) of the Building, as and when reasonably
45 required; (ii) shall repair, replace and remotely monitor the Geothermal System (except for such
46 any supplementation, replacements or upgrades to the Geothermal System installed by Tenant
47 pursuant to Section 9(b) of this Lease), as and when reasonably required; and (iii) shall make all
48 other capital improvements to the Property for which the Tenant is not responsible to make
49 pursuant to Section 10(a) and (b) above (the "Capital Repairs"), provided that the Tenant
50 promptly shall give the City Notice of the necessity for such repairs, and further provided that
51 the damage thereto shall not have been caused by the Tenant, its agents, contractors, invitees

1 or employees, in which event the Tenant shall be responsible therefore and shall promptly
2 repair such damage at its sole cost and expense pursuant to Section 25. Capital Repairs that
3 are the responsibility of Tenant to undertake and that the Tenant does not undertake after
4 Notice from the City in accordance with Section 15(a) shall be undertaken by the City and
5 invoiced to the Tenant as Additional Rent. As used in this sub-section (d), a capital
6 improvement means the addition of a permanent structural change or the restoration of some
7 aspect of the Property that will enhance its overall value, increase its useful life or adapt it to a
8 new use.

9 (e) Except as provided in this Lease, the City shall have no obligation or liability for
10 repair or maintenance of the Premises, or any part thereof, nor shall the City be under any
11 liability to repair, maintain or replace any electrical, plumbing, heating, air conditioning or other
12 mechanical installation, nor shall the City be obligated to make any improvements of any kind
13 upon the Premises, or to make any repairs, replacements or improvements to any equipment,
14 facilities or fixtures contained therein, all of which shall be the responsibility of the Tenant and
15 shall be performed as provided by Sections 10 and 11.

16
17 **11. Alterations by the Tenant.**
18

19 (a) The Tenant shall not make any alterations or improvements to the Premises
20 during the Term or any Renewal Term, unless such alterations (i) are not structural in nature
21 and do not affect the structural integrity of the Building, (ii) comply with all restrictions and/or
22 requirements of any Maryland Historic Trust easements for the Premises, (iii) are approved by
23 the City's Historic Preservation Commission, (iv) do not adversely affect the qualification of the
24 Building as an historic structure or the historic tax credits available to the City in connection
25 therewith, and (v) are performed after written approval by the City of the Tenant's specific plans
26 and specifications therefor, which approval shall not be unreasonably withheld. All alterations
27 and improvements to the Premises shall be done at the sole cost and expense of the Tenant in
28 a good and workmanlike manner, using only new or reclaimed materials and in compliance with
29 all applicable laws, codes, rules and regulations. Such alterations and improvements shall, upon
30 the installation thereof, become and be the property of the City and shall remain upon and be
31 surrendered with the Premises at the termination or expiration of this Lease. The City agrees to
32 reasonably cooperate with Tenant to process Tenant's applications for City permits for
33 alterations or improvements in a timely manner. The Tenant shall provide the City with as-built
34 drawings for all alterations and improvements made to the Premises. The Tenant shall be
35 responsible for installing and paying all costs associated with any expansion of the sprinkler, fire
36 suppression and/or fire alarm systems existing as of the Effective Date that are necessitated by
37 any alterations or improvements made by the Tenant pursuant to this sub-section.

38 (b) The Tenant shall cause all debris, rubbish and surplus materials caused by the
39 performance of its alterations and improvements to be removed from the Premises and
40 disposed of at a lawful facility as necessary or when directed by the City, but not less frequently
41 than every two (2) business days. Tenant shall not allow any such debris, rubbish and surplus
42 materials to unreasonably interfere with the operation of the Premises to the extent that the
43 Premises remain open during the making of alterations and improvements.
44

45 **12. Mechanics' and Materialmen's Liens and Other Liens.**
46

47 The Tenant shall not do or suffer to be done any act, matter or thing whereby the
48 Premises (or the Tenant's interest therein), or any part thereof, may be encumbered by any
49 mechanics' or materialmen's lien or by any other lien or encumbrance. The Tenant shall cause
50 to be canceled and discharged of record, by bond approved by the court or as otherwise
51 permitted by such court in which the claim is filed, within ten (10) business days after the date of

1 filing, any mechanics' or materialmen's liens filed against the Premises (or the Tenant's interest
2 therein), or any part thereof, purporting to be for work or material furnished or to be furnished to
3 the Tenant. The Tenant shall have no authority to encumber the City's interest in the Building or
4 the Premises, and nothing in this Lease shall be deemed or construed to make the Tenant the
5 agent of the City for the purpose of performing work in or upon, or ordering materials for, the
6 Building or the Premises.

7
8 **13. Representations of Tenant.**
9

10 The Tenant hereby represents and warrants to the City that as of the Effective Date, the
11 Tenant is a limited liability company of the State of Maryland; this Lease constitutes the legal,
12 valid and binding obligation of the Tenant enforceable in accordance with its terms; the Tenant
13 has full power and authority to enter into and perform the terms and conditions of this Lease; the
14 Tenant has obtained all necessary approvals and consents to lease the Premises from the City
15 as contemplated by this Lease; the persons executing this Lease on behalf of the Tenant is fully
16 and duly empowered and authorized to so act; and this Lease has been duly executed and
17 delivered.

18
19 **14. Release.**
20

21 The Tenant hereby waives, releases and irrevocably relinquishes any and all claims,
22 liability and causes of action, known or unknown, against the City or the City's contractors,
23 employees, agents, licensees or invitees arising during the Term and any Renewal Term in
24 connection with any damage or destruction to the property of the Tenant or of any other person
25 or entity and/or for injury or death to the person of the Tenant or of any other person or entity
26 directly or indirectly due to any cause whatsoever other than the willful misconduct or gross
27 negligence of the City or of the City's contractors, employees, agents, licensees or invitees.

28
29 **15. Inspection and Entry.**
30

31 (a) The City or its agents shall have, upon giving the Tenant at least twenty-four (24)
32 hours advance Notice (which Notice, in addition to the means set forth in Section 27, may be
33 given by telephone or orally in person) the right at all reasonable times to enter the Premises to
34 examine same and to show them, and for such other purposes as shall be necessary in the
35 reasonable exercise of the discretion of the City. The City shall not be required to give any
36 Notice to the Tenant before entering the Premises in the event of an emergency. In addition, if
37 the Tenant shall fail to make any repairs, restorations, replacements or otherwise comply with
38 the provisions of this Lease within the time specified in Section 17, then the City shall have the
39 right, but shall not be required to enter the Premises during normal business hours (or otherwise
40 in the event of an emergency) to make required repairs, restorations, replacements or fulfill the
41 other requirements hereunder and in the event the City does so act, such repairs, restorations,
42 replacements or fulfillment of other requirements shall be made by the City at the sole cost and
43 expense of the Tenant, and any costs or expenses incurred by the City shall be collectible as
44 Additional Rent and shall be paid by the Tenant after the City delivers to the Tenant a statement
45 therefor with appropriate documentation including third party invoices and receipts.

46 (b) The Tenant shall not change any locks or passwords necessary to access the
47 Building or the Premises without first providing the City with such new keys or passwords as are
48 necessary for the City to obtain such access.
49

1 **16. Tenant's Failure to Perform.**
2

3 If the Tenant shall fail, within fifteen (15) business days after the City gives the Tenant
4 Notice thereof, to keep the Premises in the state of condition and repair required by this Lease;
5 to do any act; make any payment; or perform any term or covenant on the Tenant's part
6 required under this Lease, the City may (at its option, but without being required to do so)
7 immediately, or at any time thereafter and without Notice, perform the same for the account of
8 the Tenant (including, but not limited to, entering upon the Premises at any time to make
9 repairs). Any costs incurred by the City in so performing the Tenant's obligations shall be
10 deemed Additional Rent. The City shall provide to the Tenant reasonable evidence of the costs
11 City incurred. All rights given to the City in this Section 16 shall be in addition to any other right
12 or remedy of the City herein contained.
13

14 **17. Default: Termination.**
15

16 (a) If the Tenant shall fail to obtain a beer and wine license from the City Alcoholic
17 Beverage Control Board for the Premises as permitted by § 7.12.100.B of the Annapolis City
18 Code within four (4) months of the Effective Date, then the Tenant shall have the right to
19 terminate this Lease with thirty (30) calendar days prior Notice to the City, provided such Notice
20 is given no later than June 30, 2018. The Tenant shall surrender the Premises in accordance
21 with Section 22 of this Lease.

22 (b) (i) If the Tenant shall fail to pay any installment of Rent within five (5) business
23 days after the date such installment is due unless otherwise agreed between City and Tenant
24 on a case by case basis, or (ii) if the Tenant defaults in any of the covenants or agreements
25 herein contained, including, but not limited to, failing to substantially comply with the Business
26 Summary, and not otherwise specifically provided for by this Section 17(a), which default shall
27 not be cured within fifteen (15) business days after the City gives the Tenant Notice thereof, or
28 (iii) if the Tenant shall be declared bankrupt or insolvent according to law, or shall make an
29 assignment for the benefit of creditors, or if any petition shall be filed by or against the Tenant
30 under any of the provisions of the Federal Bankruptcy Act and shall not be vacated within ninety
31 (90) calendar days thereafter, or (iv) if the Tenant vacates or abandons the Premises (items (i)
32 through (iv) are each referred to as an "Event of Tenant Default"), then the City may lawfully,
33 immediately or at any time thereafter and without Notice or demand, and without liability for any
34 damage that may be done to the property of the Tenant, enter into and upon the Premises and
35 repossess the same and declare this Lease and the tenancy hereby created terminated, and
36 expel the Tenant and those claiming under the Tenant, and the City shall be entitled to the
37 benefit of all provisions of the laws of Anne Arundel County and the Public General Laws of
38 Maryland respecting the speedy recovery of lands and tenements held over by tenants or
39 proceedings in forcible entry and detainer, and all without prejudice to any remedies which
40 might otherwise be used by the City for arrears of Rent or for any breach of the Tenant's
41 covenants herein contained. The Tenant further agrees that notwithstanding such re-entry, the
42 Tenant shall remain liable for any Rent or damages which may be due or sustained prior
43 thereto, and the Tenant shall further be liable, at the option of the City, for sums of money as
44 liquidated damages for the breach of any covenant and for all Rent due during the remainder of
45 the Term or any then current Renewal Term. As an alternative, the City may collect in a lump
46 sum the balance of Rent (including Additional Rent) which would be due during the remainder of
47 the Term or any then current Renewal Term had the Tenant not defaulted hereunder, which
48 lump sum shall be appropriately discounted to present value using then prevailing market rates
49 of interest. If the City relets the Premises to another tenant after an Event of Tenant Default,
50 any amounts (net of the costs of such reletting) received from such subsequent tenant during

1 the Term or any applicable Renewal Term shall reduce Tenant's damages due to the City
2 hereunder.

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

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

13 (e) All remedies granted hereunder or permitted by law shall be cumulative, and
14 unless inconsistent, may be exercised separately or concurrently or successively.

15 (f) From and after the occurrence of any Event of Tenant Default, the Tenant shall
16 pay to the City as Additional Rent, and the City shall be entitled to collect from the Tenant, all
17 fees, costs and expenses (including but not limited to the fees and disbursements of the City's
18 attorneys) incurred by the City in connection with such Event of Tenant Default.

19 (g) If the City materially defaults in any of the covenants or agreements herein
20 contained, which default shall not be cured within twenty (20) business days after Tenant gives
21 the City Notice thereof (each referred to as an "Event of City Default"), then the Tenant may
22 either (i) terminate this Lease with Notice to the City of such termination for cause, or (ii) receive
23 a deduction, abatement, recoupment or set-off of Basic Rent through a Notice to the City, which
24 Notice includes sufficient documentation evidencing damages that justify such a deduction,
25 abatement, recoupment or set-off of Basic Rent.

26 (h) THE CITY AND THE TENANT AGREE TO AND THEY HEREBY DO WAIVE
27 TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY
28 OF THE PARTIES HERETO AGAINST THE OTHERS ON ANY MATTERS WHATSOEVER
29 ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP
30 OF THE CITY AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES
31 AND/OR ANY CLAIM OR INJURY OR DAMAGE, AND ANY STATUTORY REMEDY.

32 (i) The City and the Tenant agree that this is a lease of property to be used
33 exclusively for a business, commercial or mercantile purpose as distinguished from residence
34 purposes as provided in Real Property Article, Section 8-110 of the Annotated Code of
35 Maryland and that this Lease and the Rent herein reserved are not subject to redemption.

36 (j) Subject to all other requirements of this Lease, and regardless of how this Lease
37 expires or terminates, including but not limited to, for either party's default, failure to obtain a
38 license as permitted by § 7.12.100.B of the Annapolis City Code, or pursuant to any court order
39 or other settlement, in no event shall the Tenant be entitled to damages or other consideration
40 in excess of the amount of Rent remaining for the then-current Term or Renewal Term.

41
42 **18. Assignment and Subletting.**
43

44 (a) The Tenant shall not assign this Lease without the prior written approval of the
45 City Council, which the City Council may refuse in the City Council's sole and absolute
46 subjective discretion. As part of any approval of an assignment, the City Council may impose
47 any terms or conditions that the City Council deems appropriate. Unless otherwise expressly
48 provided by the City Council, approval of an assignment does not relieve Tenant of any
49 obligation or liability to be performed by Tenant under this Lease at any time, and Tenant shall
50 continue to be liable as principal, and not as guarantor or surety, to the same extent as if no
51 assignment had been made

1 (b) The Tenant may sublease a portion of the Premises, for a term, including
2 renewal terms of not more than the Term and any Renewal Term of this Lease, after first
3 obtaining in each such instance prior written consent of the City, which consent may not be
4 unreasonably withheld, conditioned or delayed. A proposed sublease shall be deemed
5 approved if the City does not respond to a request for approval within ten (10) business days
6 after the City's receipt of Tenant's written request. Any sublease must be consistent with
7 Tenant's approved Business Summary. The Tenant shall provide the City with copies of all
8 subleases in a timely manner.

9 (c) In case of any subletting or assignment, whether with or without the City's
10 consent, the Tenant shall remain fully liable under this Lease. Consent in any one instance by
11 the City shall not be deemed a waiver of the requirement that the City's consent be obtained as
12 to all subsequent assignments and subleases.

13 (d) Any assignment or sublease by Tenant in violation of this Lease shall be null and
14 void and the City shall not be obligated to recognize the assignee or sublessee claims unless
15 the City agrees otherwise in writing.

16 (e) The City may at any time make an assignment of its interest in this Lease and, in
17 the event of such an assignment, the City shall be released from any and all liability accruing
18 under this Lease after the date of the assignment, except that the City may deliver any security
19 deposit to the assignee and the City shall be released from any further liability regarding the
20 security deposit. Tenant may terminate this Lease upon thirty (30) calendar days Notice upon
21 being notified that the City has assigned its interest in this Lease.

22
23 **19. Fire or Other Casualty.**
24

25 (a) In the event of partial or total damage or destruction to the Premises by fire, other
26 casualty, or any other cause whatsoever (except condemnation), that is not the responsibility of
27 the Tenant to repair or reconstruct, (i) the Tenant promptly shall give Notice thereof to the City;
28 (ii) this Lease shall continue in full force and effect, except as otherwise provided by this Section
29 19; and (iii) the City, to the extent that funds are available to the City therefor, shall thereupon
30 cause such damage or destruction to the Premises to be repaired with reasonable speed at the
31 expense of the City, due allowance being made for reasonable delay which may arise by reason
32 of adjustment of loss under insurance policies on the part of the Tenant, and for reasonable
33 delay on account of "labor troubles" or any other cause beyond the City's control. To the extent
34 that the Premises, in whole or in part, is rendered untenable for more than five (5)
35 consecutive days, the Rent shall proportionately abate based upon the portion of the Premises
36 that are untenable until the Premises, or portion of the Premises, are restored to a condition
37 substantially similar to the condition as existed immediately prior to the damage or destruction. If
38 the damage or destruction shall be so extensive to the Building as to render it uneconomical, in
39 the City's or Tenant's reasonable opinion, to restore the Premises for the use of the Tenant as
40 specified herein or the City shall decide not to repair or rebuild the Building within a reasonable
41 period of time, this Lease, at the option of either party, shall be terminated upon Notice thereof
42 to the other party and the Rent shall, in such event, be paid to or adjusted as of the date of such
43 damage, and this Lease shall terminate upon the third (3rd) business day after such Notice is
44 given. The Tenant shall thereupon vacate the Premises and surrender the same to the City in
45 accordance with Section 22, but no such termination shall release the Tenant from any liability
46 to the City arising from such damage or from any of the obligations or duties imposed on the
47 Tenant hereunder prior to such termination.

48 (b) In no event shall the City be liable for interruption to the Tenant's business or for
49 damage to or replacement or repair of the Tenant's personal property, including inventory, trade
50 fixtures, floor coverings, furniture and other property removable by the Tenant under the
51 provisions of this Lease, unless such interruption or damage is caused by fire or other casualty,

1 or the gross negligence or willful misconduct of the City or the City's contractors, employees,
2 agents, licensees or invitees.

3 (c) If the Premises are substantially damaged, in the City's reasonable opinion,
4 during the last two (2) years of the Term or any Renewal Term, then in any such events, the
5 City may terminate this Lease by giving the Tenant Notice thereof within ninety (90) calendar
6 days after the occurrence of such event. Rent and other charges shall be adjusted as of the
7 date of such damage.
8

9 **20. Eminent Domain.**

10
11 If the entire Premises is condemned or taken (either temporarily or permanently) for
12 public purposes by a government entity other than the City, or if the City shall convey the
13 Premises to any public authority in settlement of a threat of such condemnation or taking by a
14 government entity other than the City, the Rent shall be adjusted to the date of such taking or
15 conveyance, and this Lease shall thereupon terminate. If only a portion of the Premises shall be
16 so taken or condemned and, as a result of such partial taking, the Tenant is reasonably able to
17 use the remainder of the Premises for the purposes intended by this Lease, then this Lease
18 shall not terminate but, effective as of the date of such taking or condemnation, the Rent shall
19 be abated in an amount thereof proportionate to the area of the Premises so taken or
20 condemned. If, following such partial taking, the Tenant shall not be reasonably able to use the
21 remainder of the Premises for the purposes intended by this Lease, then this Lease shall
22 terminate as if the entire Premises had been taken or condemned. In the event of a taking or
23 condemnation as described in this Section 20, whether or not there is a termination of this
24 Lease, the Tenant shall have no claim against the City, other than an adjustment of Rent to the
25 date of taking or condemnation, and the Tenant shall not be entitled to any portion of any
26 amount that may be awarded as damages or paid as a result or in settlement of such
27 proceedings or threat.
28

29 **21. Signs.**

30
31 The Tenant shall not place or maintain any sign, billboard, marquee, awning, decoration,
32 placard, lettering, advertising matter or other thing of any kind, whether permanent or
33 temporary, on the exterior of the Premises or the Building, or on the glass or any window or
34 door of the Premises or the Building, without first obtaining the City's written consent and, as
35 applicable, approval by the Maryland Historic Trust and the City's Historic Preservation
36 Commission. The Tenant shall maintain any Tenant-posted approved sign, billboard, marquee,
37 awning, decoration, placard, lettering or advertising matter or other thing of any kind, and shall
38 repair and replace the same when necessary to keep it in good condition and repair at all times.
39

40 **22. Holding Over; Surrender of Premises.**

41
42 (a) If the Tenant holds possession of the Premises after the expiration or termination
43 of this Lease without the City's written consent, the Tenant shall become a tenant from month to
44 month upon all terms, other than Basic Rent, herein specified and shall continue to be such
45 tenant from month to month until such tenancy shall be terminated by either party giving the
46 other Notice thereof at least thirty (30) calendar days prior to terminating such tenancy. During
47 such month to month tenancy Tenant shall pay rent at the amount of the Basic Rent due during
48 the last month of the Lease Term or any applicable Renewal Term, except that if the hold-over
49 tenancy is over the objection of the City, Tenant shall pay Basic Rent at twice the amount of
50 Basic Rent due during the last month of the Lease Term or any applicable Renewal Term.

1 Nothing contained in this Lease shall be construed as a consent by the City to the occupancy or
2 possession of the Premises by the Tenant after the expiration or termination of this Lease. Upon
3 the expiration or termination of this Lease, the City shall be entitled to the benefit of all public
4 general or public local laws relating to the speedy recovery of the possession of lands and
5 tenements held over by tenants, that may now or hereafter be in force.

6 (b) On the last day or earlier termination of this Lease, the Tenant shall vacate the
7 Premises and leave it in good condition and repair, normal wear and tear excepted, and shall,
8 dismantle and remove all of its personal property from the Premises. Any personal property that
9 the Tenant does not remove within thirty (30) calendar days of vacating shall be deemed
10 abandoned and, at the option of the City, immediately shall become the property of the City. Any
11 other personal property that the City does not desire to retain shall be removed and disposed of
12 by the City at Tenant's cost and expense, which shall be invoiced by the City and paid by the
13 Tenant as Additional Rent.

14 (c) Within ten (10) calendar days of vacating, the City shall tour the Premises, with
15 the Tenant present if possible, to determine the condition of the Premises and the condition of
16 personal property in the Premises. Any items determined to be in need of correction or repair
17 may be corrected or repaired by the City, and shall be invoiced by the City and paid by the
18 Tenant as Additional Rent.

19
20 **23. Security; Liability of the City.**

21
22 (a) The Tenant acknowledges that the rents reserved in this Lease do not include
23 the cost of private security guards or other private security measures, and that the City has no
24 obligations to provide such private security services. The Tenant assumes all risks associated
25 with the security of the Premises. The Tenant shall police, light and maintain the Premises in a
26 clean, safe and secure manner.

27 (b) The Tenant shall not under any circumstances issue any no trespass notices,
28 whether oral or written, or exclude any individual from the Premises or the Property for any
29 reason, except to prevent a crime from being committed on the Premises or the Property, and
30 except in the case of an emergency or unsafe condition. If the Tenant desires to issue any no
31 trespass notices or exclude any individual from the Premises and/or the Property, except to
32 prevent a crime from being committed on the Premises or the Property, and except in the case
33 of an emergency or unsafe condition, the Tenant shall send a written request to the City, and
34 the City shall make the ultimate decision how and if to act on this request.

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

50
51 **24. Quiet Enjoyment.**

1
2 If the Tenant timely pays all the Rent herein reserved and is not in default in the
3 performance and observation of all of the other terms, covenants and conditions of this Lease
4 on the Tenant's part to be performed and observed hereunder, the Tenant shall, during the
5 Term and any Renewal Term, peaceably and quietly have, hold and enjoy the Premises without
6 molestation or hindrance by the City or any party claiming through or under the City, subject to
7 the provisions of this Lease.
8

9 **25. Indemnification.**

10
11 (a) The Tenant shall indemnify, defend and hold the City, its elected officials,
12 appointees, directors, employees, agents, and representatives harmless from and against all
13 liability for injuries to persons, including death, and damage to the Premises, the Property, the
14 Building, or other real and personal property, arising from acts or omissions of the Tenant, its
15 officers, agents, employees, contractors, patrons, volunteers, guests or invitees.

16 (b) The Tenant's indemnifications include reasonable attorney fees and costs
17 incurred by the City in defending any claims, complaints, causes of action, lawsuits, or other
18 such actions. The City, in its sole discretion, may participate in handling its own defense or
19 exclusively handle its own defense, and select its own attorneys, including the City Attorney.

20 (c) The Tenant indemnification does not limit any immunity which the City, its elected
21 officials, appointees, directors, employees, agents, and representatives are entitled to assert,
22 and includes all costs and expenses, including attorney's fees, whether or not related to
23 administrative or judicial proceedings.

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

28 (e) The Tenant shall ensure that the policies of insurance carried by Tenant under
29 Section 8 of this Lease provide coverage for Tenant's indemnification obligations under this
30 Section.
31

32 **26. City Council Meeting or Work Session; Annual Financial Compilation.**

33
34 a. For the purpose of keeping the Mayor and City Council of Annapolis apprised of
35 any changes to the Premises or the Tenant's use of the Premises, after the end of the first (1st)
36 year of the Term and each year thereafter during the Term and any Renewal Term, the Tenant
37 shall, if requested by the City in writing fourteen (14) calendar days prior thereto, attend a City
38 Council meeting or work session to report on any such changes.
39

40 b. Within ninety (90) calendar days from the end of each Lease year, the Tenant
41 shall provide the City with an annual financial compilation prepared by a certified public
42 accountant along with any Performance Rent due pursuant to Section 6(d).
43

44 **27. Miscellaneous.**

45
46 (a) Non-Discrimination.

47 (i) The Tenant shall not discriminate against any person with regard to
48 membership policies, employment practices, or in the provision of or access to services based
49 on race, color, religion, national origin, ancestry, sex, age, disability or any other status or class
50 protected by law. This provision shall not be construed to prevent the Tenant from rendering
51 services pursuant to this Lease to categories of individuals with specific needs, provided that

1 such services are not rendered in an unlawfully discriminatory manner.

2 (ii) The Tenant shall accept Temporary Aide to Needy Families (“TANF”),
3 commonly referred to as Temporary Cash Assistance (“TCA”), and Supplemental Nutritional
4 Assistance Payments (“SNAP”) benefits, commonly referred to as “food stamps”, as forms of
5 payment. The Tenant may impose any reasonable restrictions imposed by the United States
6 Department of Agriculture and the Anne Arundel County Department of Social Services.

7 (b) Reservation of Governmental Authority. The City reserves the right at all times to
8 exercise full governmental control and regulation with respect to all matters arising under or
9 related to this Lease, provided that such control and regulation does not constitute an
10 unconstitutional impairment of this Lease.

11 (c) Modification. This Lease sets forth the entire agreement between the parties
12 relative to the subject matter of this Lease. No representation, promise or condition, whether
13 oral or written, not incorporated herein shall be binding upon either party to this Lease. This
14 Lease shall not be waived, amended or modified except in writing and signed by the authorized
15 representative(s) of both parties. No act by any representative or agent of the City, other than
16 such a written agreement and acceptance by the City, shall constitute an acceptance thereof.

17 (d) Access to Records. During normal business hours with reasonable prior Notice
18 from the City, and as often as the City may deem necessary, the Tenant shall make available to
19 and allow inspection and copying by the City, its employees or agents, of all books, records,
20 accounts, reports, information and documentation of the Tenant related to the subject matter of
21 this Lease. The Tenant shall maintain all books, records, accounts, reports, information and
22 documentation required under this Lease for a period of at least three (3) years after the date of
23 termination of this Lease including any renewals, except in the event of litigation or settlement of
24 claims arising from the performance of this Lease, in which case the Tenant shall do so until
25 three (3) years after final adjudication of such litigation or settlement of claims. Tenant shall
26 mark as “Confidential” any books, records, accounts, reports, information and documentation
27 that the City inspects and copies and that Tenant desires to maintain as confidential. For
28 purposes of the Maryland Public Information Act, to the extent practicable the City shall treat as
29 “Confidential” and not disclose any Tenant books, records, accounts, reports, information and
30 documentation that Tenant has marked as “Confidential.”

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

38 (f) Independent Contractor Status. Nothing contained in this Lease shall be
39 construed to constitute the Tenant as an agent, representative or employee of the City, or to
40 create any relationship between the parties other than landlord and tenant.

41 (g) Binding Effect. The terms of this Lease shall be binding on and enforceable
42 against the parties and their respective successors and assigns.

43 (h) Governing Law. In all actions arising from this Lease, the laws of the State of
44 Maryland shall govern, and the venue for all actions initiated pursuant to this Lease shall be
45 exclusively the Courts of Anne Arundel County, Maryland. The parties waive jury trial in all
46 actions initiated pursuant to this Lease.

47 (i) Recitals. The recitals (WHEREAS clauses) of this Lease are incorporated into
48 and are a material part of this Lease.

49 (j) Severability. If any of the provisions of this Lease are declared by a court or
50 other lawful authority to be unenforceable or invalid for any reason, the remaining provisions

1 hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by
2 law.

3 (k) Survival. Those sections in this Lease which by their nature are intended to
4 survive shall survive the termination of this Lease.

5 (l) Authorization. This Lease is authorized by the City Council pursuant to O-5-18.

6 (m) Availability of Funds. All financial obligations of the City, and the performance of
7 such obligations, are subject to appropriation and availability of funds.

8 (n) Terminology.

9 (i) Where this Lease provides for an act to be undertaken or performed by
10 the "City", the act shall be undertaken by the City Manager.

11 (ii) Where this Lease provides for an act to be undertaken or performed by
12 the City Council, the act shall be performed by a simple majority of the City Council.

13 (iii) Where this Lease provides for an act to be undertaken or performed in a
14 certain number of "business days", business days shall mean Monday through Friday.

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

19 (p) Business Summary. Any reference to and/or discussion of activities, actions,
20 obligations and/or decisions in the Business Summary shall be consistent with the applicable
21 Lease requirements, including, but not limited to, obtaining the proper approval from the City or
22 City Council.

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

- 27
- 28 To the City: City Manager
- 29 160 Duke of Gloucester Street
- 30 Annapolis, Maryland 21401
- 31
- 32 With a Copy to: City Attorney
- 33 160 Duke of Gloucester Street
- 34 Annapolis, Maryland 21401
- 35
- 36 To the Tenant: _____
- 37 _____
- 38 _____
- 39 _____

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

4
5 WITNESS:

NEW MARKET HOUSE, LLC

6
7
8 _____

By: _____

Name: _____ (Seal)

Title:

9
10
11
12
13 ATTEST:

CITY OF ANNAPOLIS

14
15
16 _____
17 Regina C. Watkins-Eldridge, MMC,
18 City Clerk

By: _____

Gavin Buckley, Mayor (Seal)

19
20
21 APPROVED FOR FINANCIAL SUFFICIENCY:

REVIEWED AND APPROVED BY:

22
23
24 _____
25 Bruce T. Miller, Director
26 Finance Department

27
28 REVIEWED AND APPROVED BY:

29
30
31 _____
32 David Jarrell, Director
33 Department of Public Works

34
35 APPROVED FOR FORM AND LEGAL SUFFICIENCY:

36
37
38 _____
39 OFFICE OF THE CITY ATTORNEY
40

**ATTACHMENT A
DEPICTION OF MARKET HOUSE AND PREMISES**

[See following page.]

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**ATTACHMENT B
BUSINESS SUMMARY**

[See following pages.]

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**ATTACHMENT C
DEED OF PRESERVATION EASEMENT**

[See following pages.]

**ATTACHMENT D
PERFORMANCE RENT**

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“Performance Rent” shall mean two percent (2%) of cumulative annual gross revenues (exclusive of sales taxes) over One Million Five Hundred Thousand Dollars and No Cents (\$1,500,000.00) received during each Lease year by Tenant and all approved subtenants.