

## 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 30<sup>th</sup>, except that the first year of this Lease shall begin on the Effective Date and end on the next June 30<sup>th</sup> 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

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

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

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

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

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

d. Any additional renewals of this Lease shall be for successive term(s) of five (5) years each, and shall be mutually agreed upon through a written Notice between the City and the Tenant.

### **3. Condition of Premises.**

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

### **4. Permitted Use.**

(a) The Tenant shall use and occupy the Premises for the purpose of operation of a public market house as described in § 7.28.020 of the Annapolis City Code or successor code, and for no other purposes, and in accordance with the Tenant's "Business Summary", attached hereto and incorporated herein as **Attachment B**. The Business Summary shall only be modified through a written amendment approved by the Tenant and City Council. The Tenant shall be entitled to use the Alfred A. Hopkins Plaza (the "Hopkins Plaza") adjacent to the Property, on a non-exclusive basis for purposes of conducting an Open Air Market as described in § 7.28.010 of the Annapolis City Code, with the prior written approval of the City, which approval may be altered or revoked at any time. The Tenant shall not block public access to the Kunta Kinte Memorial situated in Hopkins Plaza. Blocking such public access may result in revocation of the Tenant's right to use Hopkins Plaza.

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

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

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

(e) Tenant shall continuously, actively and diligently operate the Market House throughout the whole of the Premises in accordance with the Business Summary. Tenant shall be in default of the Lease if more than twenty percent (20%) of the gross floor area of the Premises used for the sale of food, beverage and goods ceases to be in actual use for that purpose for more than three (3) consecutive months, except for reason of fire or other casualty covered by Section 19 of this Lease. For purposes of this sub-section, floor area used for public restrooms shall not be included in the computation of "gross floor area."

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

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

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

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

(i) Oversight of all operations at the Premises;

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

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

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

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

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

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

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

## **6. Security Deposit; Rent.**

(a) No later than the Effective Date, the Tenant shall deposit with the City's Finance Director, 160 Duke of Gloucester Street, Annapolis MD, 21401, the amount of Eight Thousand Dollars and No Cents (\$8,000.00) (the "Security Deposit"). The City shall have no obligation to pay any interest on the Security Deposit, and may commingle it in an account with other funds. The City, at its option, may apply any part of the Security Deposit towards the payment of outstanding amounts due under this Lease, provided always that the Tenant's liability under this Lease shall not thereby be discharged. Upon any uncured monetary default, the City may request, and the Tenant shall be obligated to deposit, additional security to secure the Tenant's

performance under this Lease within ten (10) business days to restore the Security Deposit to its original amount. If not used, the Security Deposit shall be returned to the Tenant within thirty (30) calendar days after the Tenant vacates the Premises in accordance with Section 22.

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

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

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

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

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

(g) All payments or installments of Rent hereunder (including attorneys' fees) shall be paid to the City's Finance Director, 160 Duke of Gloucester Street, Annapolis MD, 21401. Time is of the essence with respect to the Tenant's obligations to pay Rent. Any payment by the Tenant or acceptance by the City of a lesser amount than is due from the Tenant to the City shall be treated as a payment on account. The acceptance by the City of a payment for a lesser amount with an endorsement or statement, or upon any letter accompanying such payment, that such lesser amount is payment in full, shall be given no effect, and the City may accept such payment without prejudice to any other right or remedy which the City may have against the Tenant, unless otherwise agreed in writing by both parties.

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

## **7. Taxes.**

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

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

## **8. Insurance.**

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

City's request, made no more frequently than the commencement of each Renewal Term, the Tenant shall increase the amounts of coverages required by this Section 8(a) to amounts reasonably satisfactory to the City taking into account inflation, changes in risks being insured, and changes in commercially reasonable standards for insurance of such types.

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

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

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

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

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

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

**9. Utilities.**

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

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

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

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



maintenance.

## **10. Repairs and Maintenance.**

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

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

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

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

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

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

#### **11. Alterations by the Tenant.**

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

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

#### **12. Mechanics' and Materialmen's Liens and Other Liens.**

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

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

**13. Representations of Tenant.**

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

**14. Release.**

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

**15. Inspection and Entry.**

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

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

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

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

**17. Default: Termination.**

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

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

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

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

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

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

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

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

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

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

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

## **18. Assignment and Subletting.**

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

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

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

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

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

#### **19. Fire or Other Casualty.**

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

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

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

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

## **20. Eminent Domain.**

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

## **21. Signs.**

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

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

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

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

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

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

### **23. Security; Liability of the City.**

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

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

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



**24. Quiet Enjoyment.**

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

**25. Indemnification.**

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

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

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

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

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

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

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

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

**27. Miscellaneous.**

(a) Non-Discrimination.

(i) The Tenant shall not discriminate against any person with regard to membership policies, employment practices, or in the provision of or access to services based on race, color, religion, national origin, ancestry, sex, age, disability or any other status or class protected by law. This provision shall not be construed to prevent the Tenant from rendering

services pursuant to this Lease to categories of individuals with specific needs, provided that such services are not rendered in an unlawfully discriminatory manner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) Terminology.

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

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

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

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

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

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

To the City:                   City Manager  
                                      160 Duke of Gloucester Street  
                                      Annapolis, Maryland 21401

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

To the Tenant:             \_\_\_\_\_  
                                      \_\_\_\_\_  
                                      \_\_\_\_\_  
                                      \_\_\_\_\_

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

WITNESS:

NEW MARKET HOUSE, LLC

\_\_\_\_\_

By: \_\_\_\_\_  
Michele Bouchard (Seal)  
Member

ATTEST:

CITY OF ANNAPOLIS

\_\_\_\_\_  
Regina C. Watkins-Eldridge, MMC,  
City Clerk

By: \_\_\_\_\_  
Marc Rodriguez, Alderman (Seal)  
as designated by Gavin Buckley, Mayor

APPROVED FOR FINANCIAL SUFFICIENCY:

REVIEWED AND APPROVED BY:

\_\_\_\_\_  
Bruce T. Miller, Director  
Finance Department

\_\_\_\_\_  
Thomas C. Andrews, City Manager

REVIEWED AND APPROVED BY:

\_\_\_\_\_  
David Jarrell, Director  
Department of Public Works

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
OFFICE OF THE CITY ATTORNEY

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

[See following page.]

**ATTACHMENT B  
BUSINESS SUMMARY**

**New Market House, LLC  
Business Summary - February 9, 2018**

**Our Mission:**

- Be a catalyst for the revitalization of City Dock, and the greater Downtown area.
- Be a good neighbor to the residents of Annapolis.
- Be a good steward of this important historic landmark and restore it to its position as a vibrant center of commerce and meeting place for locals and visitors alike.
- We will engage the community and surrounding businesses in order to make the Market House, the City's Market House.
- We want the Market House to not only be the gateway to the City of Annapolis, but also to create a market that is relevant to and will attract people who live here, and that will proudly display the bounty of Annapolis, Anne Arundel County, Maryland and the world.
- We look forward to a long, successful partnership with the City of Annapolis, the local community, and its many visitors.

**The New Market House Concept:**

We will operate a modern, public market house that will offer made to order food, fresh prepared items, beer, wine, and retail items that will be available for on-site consumption, and take out. Items will be offered from one or more vendors operating the various stall locations. Vendors will offer seasonally variable fresh produce and market goods in the market sections with an emphasis on local and regional products in accordance with consumer demand. Items sold will reflect the demands and needs of a combination of customers including Residents, Visitors, Boaters, etc.

The setting will include interior tables that will offer space for Market House customers to meet to consume items purchased at the counter(s), and share in the beauty of the Market House public space and the surrounding areas. We will help the City keep the surrounding sidewalks and Hopkins Plaza clean of debris, to enable Market House customers and city visitors to enjoy a pleasant outdoor experience.

Our targeted hours of operation are:

Mon-Thu - 6am to 10pm

Fri-Sat - 6am to 12am

Sun - 7am-10pm Sun.

Our desire is to maintain this schedule throughout the year, but our operating hours may vary with the season and with consumer demand.

With proper City approval, and to the extent various groups provide support, we would also like

to offer expanded “Market Days”, in Market Space and surrounding areas, which would add many more items for sale, from many local establishments, farmers, craftspeople and artisans. We may also choose to offer seasonal and holiday specific events. The frequency and duration of these events is to be determined.

We will seek to acquire a 12am beer and wine license, as allowed under 7.12.100.B1.

If requested, we will provide high level reporting to the City quarterly, and complete CPA created reporting annually.

### The New Market House Concept:





These conceptual drawings are designed to indicate the general location of the various components of our plan. The final design will be based on consumer demands, seasonal issues, work flow, and final construction decisions, etc.

In the event of a discrepancy between details in this summary, and the lease, the lease prevails.



**ATTACHMENT C  
DEED OF PRESERVATION EASEMENT**

[See following page.]

**ATTACHMENT D**  
**PERFORMANCE RENT**

“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.