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

**LEASE AGREEMENT  
BETWEEN THE CITY OF ANNAPOLIS AND  
McGARVEY’S ANNAPOLIS, LLC  
FOR MARKET SPACE**

2           **THIS LEASE AGREEMENT** (“Lease”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2021,  
3 by and between the City of Annapolis, a municipal corporation of the State of Maryland (the “City”),  
4 and McGARVEY’S ANNAPOLIS, LLC, a Maryland limited liability company (the “Tenant”).

5           **WHEREAS**, the City is the fee simple owner of a parcel of land consisting of nineteen  
6 (19) marked parking spaces and related roadways, located at Market Space, Annapolis, Maryland  
7 21401 (collectively, the “Property”), and as more particularly described in a deed dated July 28,  
8 1784, and attached hereto and incorporated herein as Attachment A; and

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

10           **WHEREAS**, the Tenant wishes to lease a portion of the Property, including one hundred  
11 twenty (120) square feet of exclusive walkway area, together with a right to use, in common with  
12 others, adjoining sidewalks abutting the Property, all as further depicted in Attachment B (the  
13 “Premises”) attached hereto and incorporated herein, but excluding parking meters, bollards and  
14 chains, and parking and traffic control signage; and

15           **WHEREAS**, the Tenant wishes to lease the Premises for the purpose of extending its  
16 indoor restaurant seating as outdoor dining, and related special event, festival, and market  
17 activities, in connection with its business as further described herein; and

18           **WHEREAS**, Bembe Beach, LLC, Iron Rooster-Annapolis, LLC, New Market House LLC,  
19 and Middleton’s Tavern, Ltd. (collectively, the “Other Tenants”) wish to lease the remaining  
20 portions of the Property for similar purposes, as depicted in Attachment B, and in accordance with  
21 separate lease agreements with the City; and

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

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

27   **1. Term; Tenant Termination with Start of the City Dock Project.**

28           a.       The City leases to the Tenant and the Tenant hereby leases from the City Premises  
29 for a Term commencing on the Effective Date, as defined herein, and terminating on June 30,

1 2022 (the “Original Term”), unless terminated earlier in accordance with the terms of this Lease.  
2 For purposes of this Lease, the “Effective Date” shall be that date falling thirty (30) calendars after  
3 the expiration or termination of the State of Maryland State of Emergency related to the COVID-  
4 19 Pandemic.

5 b. Provided that the Tenant is not otherwise in default hereunder and continues to  
6 occupy the Premises, and subject to the City’s termination rights herein, the Tenant shall have  
7 the option to renew this Lease for successive terms of one (1) year upon the same terms and  
8 conditions herein except as may otherwise be provided for in a written amendment to this Lease  
9 (each a “Renewal Term” and collectively the “Renewal Terms”); provided that regardless of any  
10 Term or Renewal Term currently in effect, the Lease shall expire on the Start of the City Dock  
11 Project, as defined herein. Each Renewal Term shall commence and run with the City fiscal year  
12 (July 1<sup>st</sup> – June 30<sup>th</sup>). If the Tenant elects to exercise its option, it shall give the City at least sixty  
13 (60) calendar days written notice before the expiration of the Term, or any Renewal Term thereof.

14 c. For purposes of this Lease, “Start of the City Dock Project” shall be that date on  
15 which construction of the revitalization work at Market Space begins. The City shall provide the  
16 Tenant prior notice of the estimated Start of the City Dock Project date at least sixty (60) calendar  
17 days prior to the estimated date and the exact Start of the City Dock Project date as soon as  
18 reasonably established by the City. Within thirty (30) calendar days of such notice, the Tenant  
19 may terminate this Lease for convenience by providing written notice to the City that specifies a  
20 termination date prior to the Start of the City Dock Project date. Any such termination of this Lease  
21 by the Tenant shall not discharge the Tenant from any obligation it may have to the City by reason  
22 of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the  
23 circumstances, events or basis of which shall occur or arise) prior to such termination, whether  
24 the same be known or unknown at the time of such termination. The City shall prorate the Rent,  
25 and any Additional Rent, as of the date of termination for convenience.

26 **2. Use of Premises.**

27 a. The Tenant may use and occupy the Premises during the Term and any Renewal  
28 Term of this Lease only for the purpose of outdoor dining, and related special event, festival,  
29 market, and similar activities, in connection with its business (the “Purpose”), as further described  
30 in Attachment C attached hereto and incorporated herein, and for no other purpose whatsoever.  
31 The space on the Property leased to the Other Tenants is expressly and specifically excluded  
32 from this Lease, and the Other Tenants shall not be considered parties to or third party  
33 beneficiaries of this Lease.

34 b. The Tenant accepts the Premises in “as is” condition. The City makes no  
35 representation or warranty with respect to the condition or state of the land, the Property, or the  
36 Premises, or its fitness for any particular use, and the City shall not be liable for any latent or  
37 patent defect thereon. Unless as otherwise expressly provided in this Lease, the City does not  
38 make, and specifically disclaims, any representations, warranties or covenants of any kind or  
39 character, express or implied, with respect to the nature, condition, economical, functional,  
40 environmental or physical condition of the Premises. The Tenant represents and warrants to the  
41 City that: (1) the Tenant is knowledgeable in matters of real estate or had an opportunity to consult  
42 with a real estate professional; (2) the Tenant is relying solely on the Tenant’s own expertise  
43 and/or the expertise of the Tenant’s consultants with respect to the Premises; (3) the Tenant shall

1 assume all risk that adverse matters, including, but not limited to, adverse physical and  
2 environmental conditions, may not have been revealed through the Tenant's, or the Tenant's  
3 consultants', inspections, tests, studies, and investigations of the Premises.

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

13 d. The Tenant shall comply with all requirements of the City Fire Marshal's Office in  
14 its use of the Premises and the Property. The Tenant shall insure that no personal property,  
15 structures, or other materials remain in the fire lane (the "Fire Lane"), as depicted on Attachment  
16 B, at any time when the Tenant's business operations are closed or otherwise have no available  
17 staff to remove personal property from the Fire Lane.

18 e. The Tenant shall comply with all requirements of the Americans with Disabilities  
19 Act (ADA) in its use of the Premises, the Property, and any abutting public walkways including,  
20 but limited to any sidewalks, and any private property entrances and exits.

21 f. Music or other amplified sound on the Premises shall not exceed the maximum  
22 decibel levels or the time restrictions specified in Chapter 11.12 of the Code of the City of  
23 Annapolis, as may be amended.

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

27 h. The Tenant may install or otherwise place non-permanent decorative,  
28 architectural, or vegetative elements to the Premises (collectively, the "Decorations"), and may  
29 also place its own tables, chairs, benches, tents, and similar items (collectively, the "Furnishings")  
30 on the Premises for use as outdoor dining during the regular business hours of the Tenant's  
31 business establishment. The Tenant shall use good faith efforts to purchase and install all of the  
32 new Decorations and the new Furnishings on the Premises no later than March 1, 2022, which  
33 shall replace the Decorations and Furnishings currently existing as of the date of this Lease. All  
34 such Decorations and Furnishings shall be approved by the City's Chief of Historic Preservation  
35 prior to use on site. The Tenant shall keep the Premises, any Decorations, and any Furnishings  
36 free of trash and debris, and in a clean, safe, orderly and functioning (or properly stored) manner  
37 at all times.

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

41 **3. Tenant's Responsibilities for Management of the Premises and the Property.**

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

- 5 a. Oversight of all operations at the Premises;
- 6 b. Quality assurance for all aspects of the Premises' areas;
- 7 c. Development and assurance of proper security procedures for the Premises; and
- 8 d. Coordination with all of the Other Tenants for the following:
  - 9 (1) Deliveries to any properties abutting or adjacent to the Property;
  - 10 (2) City access pursuant to Paragraph 20(a);
  - 11 (3) Access by any regulated utility company pursuant to Paragraph 20(c);
  - 12 (4) Access for private and City-contracted trash, recycling and yard waste  
13 collection services pursuant to Paragraph 20(d);
  - 14 (5) Access through the Property by certain private property owners pursuant  
15 to Paragraph 20(e); and
  - 16 (6) Maintenance of barriers around the Property as required and approved by  
17 the City, including any needed coordination for moving/removal of such  
18 barriers to provide any access to the Property required by this Lease.

19 **4. Rent; Security Deposit.**

20 a. As annual rent for the Premises, the Tenant shall pay unto the City Twenty-Nine  
21 Thousand Three Hundred Twenty-Eight Dollars and Seventy-Three Cents (\$29,328.73) payable  
22 in twelve (12) equal monthly payments of Two Thousand Four Hundred Forty-Four Dollars and  
23 Six Cents (\$2,444.06) (collectively, the "Rent"). Each payment shall be made promptly when due,  
24 in advance, on the first day of each month during the Original Term and any Renewal Term,  
25 without deduction, setoff or counterclaim whatsoever, and without demand. The City shall prorate  
26 the Rent, and any Additional Rent, if the Effective Date occurs later than July 1, 2021. All  
27 payments shall be made payable to the "City of Annapolis" and shall be sent or delivered to the  
28 Finance Director, Finance Department, City Hall, 160 Duke of Gloucester Street, Annapolis,  
29 Maryland 21401. Rent is based, in part, on a total charge of \$22.50 per parking spot per day for  
30 all five tenants (i.e. the Tenant and the Other Tenants), to be included as part of the Premises  
31 and/or the leased premises of the Other Tenants. The Rent shall escalate at a rate of two percent  
32 (2.0%) on July 1, 2022 and on each July 1st thereafter.

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

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

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

11 e. No later than the Effective Date, the Tenant shall deposit with the City's Finance  
12 Director, 160 Duke of Gloucester Street, Annapolis MD, 21401, the amount of Five Thousand  
13 Dollars and No Cents (\$5,000.00) (the "Security Deposit"). The City shall have no obligation to  
14 pay any interest on the Security Deposit, and may commingle it in an account with other funds.  
15 The City, at its option, may apply any part of the Security Deposit towards the payment of  
16 outstanding amounts due under this Lease, provided always that the Tenant's liability under this  
17 Lease shall not thereby be discharged. Upon any uncured monetary default, the City may request,  
18 and the Tenant shall be obligated to deposit, additional security to secure the Tenant's  
19 performance under this Lease within ten (10) business days to restore the Security Deposit to its  
20 original amount. If not used, the Security Deposit shall be returned to the Tenant within thirty (30)  
21 calendar days after the Tenant vacates the Premises in accordance with Paragraph 24.

22 **5. Quiet Enjoyment.**

23 The Tenant may peaceably and quietly have, hold and enjoy the Premises for the Term  
24 of this Lease subject, however, to the terms of this Lease and compliance with these terms.

25 **6. Utilities/Services.**

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

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

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

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

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

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

5 The Tenant shall retain ownership of all of its trade and business equipment, furnishings  
6 and personal property from time to time installed on the Premises. No fixtures, equipment or  
7 furnishings may be attached or affixed to the exterior of the surrounding buildings. The Tenant  
8 may remove any such fixtures, equipment or furnishings at any such time during the Term and  
9 shall remove all of it prior to the expiration of the Lease. Removal shall not cause any damage to  
10 the Premises or the Property. The Tenant shall pay for any damages it may cause, which shall  
11 be due and payable by the Tenant within thirty (30) calendar days of City invoicing. Any such  
12 personal property not removed at the expiration of the Term shall be handled in accordance with  
13 Paragraph 24 of this Lease.

14 **8. Repairs and Maintenance.**

15 a. The Tenant, at its own cost and expense, shall keep and maintain the Premises  
16 and any appurtenances to the Premises (other than space rented to other tenants) in good order  
17 and condition, and cause no waste or damages thereto. At the expiration of this Lease, the Tenant  
18 shall surrender the Premises broom clean and in the same order and condition in which they were  
19 on the commencement date, ordinary wear and tear accepted.

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

23 c. Prior to the Tenant repairing, replacing or otherwise altering any aspect of the  
24 Premises or the Property, the Tenant shall provide the City with thirty (30) calendar day prior  
25 written notice specifying the need for and nature of any and all such repairs, replacements or  
26 alternations, and providing the City with a copy of all applicable contracts or agreements with any  
27 third party hired by the Tenant to perform such repairs, replacements or alterations. The Tenant  
28 or its contractors shall not start or undertake any such repairs, replacements or alterations without  
29 the prior written approval of the City, and without first obtaining all necessary permits and  
30 governmental approvals. Such repairs, replacements or alterations shall be made and rendered  
31 by professional contractors licensed in the State of Maryland, be done in a good and workmanlike  
32 manner, and shall comply in all respects with all applicable federal, state, local and City laws,  
33 ordinances and regulations, including, but not limited to, zoning, building and fire code  
34 requirements. The Tenant agrees that all such improvements shall become the property of the  
35 City when made, and further, that the Tenant shall be entitled to no reimbursement or re-payment  
36 for any such improvements.

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

41 **9. Signs.**

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

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

8 The Tenant's employees, agents, contractors, clients, guests, and invitees shall be entitled  
9 to the non-exclusive use, free of charge, but in common with others including the Other Tenants,  
10 of the driveways, footways and parking areas within the Property, subject to any rules and  
11 regulations as the City may, from time to time, require.

12 **11. Non-Discrimination.**

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

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

18 **12. No Assignment or Sublease.**

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

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

24 a. The Tenant assumes all risks associated with the security of the Premises. The  
25 City shall have no obligation or duty with regard to security. The Tenant shall police, light and  
26 maintain the Premises in a 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 reason,  
29 except to prevent a crime from being committed on the Premises or the Property. If the Tenant  
30 desires to issue any no trespass notices or exclude any individual from the Premises and/or the  
31 Property, the Tenant shall send a written request to the City and the City shall make the ultimate  
32 decision how and if to act on this request.

33 c. The City, its elected officials, appointees, directors, employees, agents, and  
34 representatives (the "Indemnified Parties") shall not be liable for any damage to property of the  
35 Tenant or of others located on the Premises or entrusted to its or their employees nor for the loss  
36 of any property by theft or otherwise, nor for any injury or damage to persons or property resulting  
37 from theft, casualty, acts of God, fire of every nature and type, the accumulation of snow or ice,  
38 explosion, falling plaster, steam, gas, electricity, wind, water, rain or snow which may overflow or  
39 leak or be discharged from any part of the Premises or the Property or from the pipes, appliances

1 or plumbing works of the same or from the street or subsurface or from any other place, or from  
2 dampness, or from any other cause whatsoever; nor shall the City be liable for any such damage  
3 caused by other tenants or persons in the Premises or the Property, or for damage caused by  
4 operations in construction of any public or quasi-public works. All property of the Tenant kept or  
5 stored on the Premises shall be so kept at the risk of the Tenant only and the Tenant shall  
6 indemnify, defend and hold the Indemnified Parties harmless from any and all claims of every  
7 kind arising out of damage to the same, including subrogation claims by the Tenant's insurance  
8 carrier.

9 **14. Compliance with Laws.**

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

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

23 **15. Insurance.**

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

28 1. Commercial General Liability Insurance Policy, including contractual  
29 liability and property liability insurance for the Premises, written on an occurrence basis, in  
30 adequate quantity to protect against legal liability arising out of this Lease, but no less than  
31 \$1,000,000.00 per person and \$2,000,000.00 per occurrence in the aggregate, using a Combined  
32 Single Limit for bodily injury and property damage.

33 2. Workers' Compensation as required by Maryland law and, when required,  
34 the U.S. Longshoremen's and Harbor Workers' Compensation Act, including standard Other  
35 States coverage; Employers' Liability coverage with limits of at least \$100,000.00 each accident,  
36 \$100,000.00 each employee disease, and \$500,000.00 disease policy limit.

37 b. At all times during the Term and any Renewal Term, at the Tenant's sole cost and  
38 expense, the Tenant shall insure the contents of the Premises, including, without limitation,  
39 alterations, decorations, furnishings, fixtures and equipment used or installed in the Premises by  
40 or on behalf of Tenant, and all personal property of the Tenant in the Premises, against loss due  
41 to fire and other property risks included in standard all risk coverage insurance policies, in an



1 amount equal to the replacement cost thereof and covering loss of income from such property  
2 risk. All insurance carried by the Tenant hereunder shall be primary and not contributing with any  
3 insurance carried by the City.

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

7 5. c. Such policy or policies of insurance shall contain a provision by which the  
8 insurer waives any right of subrogation against the City arising out of any loss covered by such  
9 insurance.

10 6. d. The City shall not be liable to the Tenant for any damage to the Tenant's  
11 property caused by the negligence or intentional acts of any other tenant on the Property, or  
12 caused by any condition existing on or emanating from the property of any other tenant which is  
13 caused by such tenant or any of its agents or contractors.

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

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

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

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

29 i. The required insurance shall be primary to any other valid and collectable  
30 insurance.

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

34 **16. Indemnification.**

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

1           b.       The Tenant shall indemnify, defend and hold the Indemnified Parties harmless  
2 from and against all liability for injuries to persons, including death, and damage to the Premises  
3 and the Property arising from acts or omissions of the Tenant, its officers, agents, employees,  
4 contractors, patrons, volunteers, guests or invitees resulting in connection with this Lease. The  
5 Tenant shall also indemnify, defend and hold the Indemnified Parties harmless from and against  
6 any and all liabilities, claims, suits, or demands which may be made against the Indemnified  
7 Parties by any third party arising from the alleged violation of any third party's trade secrets,  
8 proprietary information, trademark, copyright, patent rights, or other intellectual property rights, or  
9 from the alleged violation of unfair competition, defamation, invasion of privacy, anti-discrimination  
10 laws or regulations, or any other right of any person or entity in connection with the Tenant's use  
11 of the Premises or the Property under this Lease.

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

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

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

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

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

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

34   **18.    Liens and Encumbrances.**

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

1           b.       During the Term of this Lease, the Tenant shall not mortgage or encumber the  
2 Premises or the Property.

3 **19. Taxes and Assessments.**

4           a.       The Tenant shall pay all impositions including all state, county and City taxes  
5 (including real estate ad valorem, sales, use, and occupancy taxes), and assessments of any kind  
6 and nature whatsoever, including all interest and penalties on them, which shall or may accrue or  
7 be incurred during the Term of this Lease. The Tenant shall pay all such taxes and assessments  
8 before any fine, penalty, interest, or cost may be added for nonpayment, and shall furnish to the  
9 City, on request, official receipts or other satisfactory proof evidencing such payment. If any tax  
10 or assessment is payable in installments over a period of years, the Tenant shall be liable only  
11 for payment of those installments falling due and payable during the Term, with appropriate pro-  
12 ration in case of fractional years.

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

18 **20. Right of Entry.**

19           a.       The City and its employees, representatives, agents, and servants, including any  
20 builder or contractor employed by the City, shall have the absolute unconditional right at any and  
21 all reasonable times, after not less than twenty-four (24) hours notice to the Tenant (except in the  
22 case of an emergency where no such notice is required), to enter the Premises or the Property  
23 for any of the following purposes: (a) to inspect the Premises and the Property; (b) to make such  
24 repairs and/or changes in the Premises or the Property as the City may deem necessary or  
25 proper; (c) to access any City owned or maintained utility; (d) to enforce and carry out any  
26 provision of this Lease; (e) to perform any snow removal or related operations on the Property  
27 and any adjacent roadways; (f) for any purpose relating to the safety, protection or preservation  
28 of the Premises or the Property; or (g) for any other purpose related to the enforcement of this  
29 Lease.

30           b.       The City shall use reasonable efforts to minimize interference to the Tenant's  
31 business or use of the Premises or the Property when making inspections or repairs, but the City  
32 shall not be required to perform the inspections or repairs at any time other than during normal  
33 working hours.

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

39           d.       The Tenant, in coordination with the Other Tenants as specified in Paragraph 3,  
40 shall provide for regular access to the Property, and the Premises as applicable, for both private  
41 and City-contracted trash and recycling services.

1 e. The Tenant, in coordination with the Other Tenants as specified in Paragraph 3,  
2 shall provide for access through the Property, and the Premises as applicable, on an as-requested  
3 basis for private property owners abutting to or adjacent to the Property as relates to larger  
4 delivery vehicles, moving vehicles, or construction vehicles.

5 **21. Reservation of Governmental Authority.**

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

8 **22. Defaults or Breach.**

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

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

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

16 3. The Tenant's general assignment or general arrangement for the benefit of  
17 creditors, the filing by or against the Tenant of a petition to have the Tenant adjudged a bankrupt  
18 or a petition for reorganization or arrangement under any law relating to bankruptcy (unless in the  
19 case of a petition filed against the Tenant, the same is dismissed within sixty (60) calendar days),  
20 the appointment of a trustee or receiver to take possession of substantially all of the Tenant's  
21 property located in the Premises or the Tenant's interest in this Lease where such seizure is not  
22 discharged or bonded within ten (10) business days, the attachment, execution or other judicial  
23 seizure of substantially all of the Tenant's interest in this Lease, where such seizure is not  
24 discharged or bonded within ten (10) business days.

25 4. Vacating or abandonment of the Premises by the Tenant.

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

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

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

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

35 1. Terminate this Lease and the Tenant's right to possession of the Premises  
36 and with or without legal process, re-enter and take possession of the Premises and remove the  
37 Tenant, any occupant and any property therefrom, without being guilty of trespass or being liable

1 to any suit, action or prosecution therefore, which liability the Tenant hereby expressly waives,  
2 and without relinquishing any rights of the City against the Tenant. Notwithstanding such re-entry  
3 and termination of this Lease, the Tenant shall remain liable to the City for any payments or  
4 damages, including, but not limited to, outstanding Rent and Additional Rent and attorneys' fees,  
5 due or sustained prior thereto; or

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

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

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

18 **23. Termination for Convenience.**

19           Either party may terminate this Lease for convenience, for any reason, and at any time by  
20 providing sixty (60) calendar days prior written notice to the other party. Any such termination of  
21 this Lease shall not discharge the Tenant from any obligation it may have to the City by reason of  
22 any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the  
23 circumstances, events or basis of which shall occur or arise) prior to such termination, whether  
24 the same be known or unknown at the time of such termination. The City shall prorate the Rent,  
25 and any Additional Rent, as of the date of termination for convenience.

26 **24. Surrender of Premises.**

27           a.       On the last day or earlier termination of this Lease, the Tenant shall vacate the  
28 Premises and leave it in good condition and repair, normal wear and tear excepted. If the  
29 Premises are not surrendered when required, the Tenant shall indemnify, defend and hold the  
30 Indemnified Parties harmless against loss or liability resulting from the delay by the Tenant in  
31 vacating the Premises, including, without limitation, any claims made by any succeeding tenant  
32 or other occupant founded on such delay. Any holding over with the consent of the City after the  
33 termination of this Lease shall be construed to be a tenancy from month-to-month upon the same  
34 terms and conditions as provided in this Lease, to the extent applicable.

35           b.       On the last day or earlier termination of this Lease, and in accordance with  
36 Paragraph 7 of this Lease, the Tenant shall, within thirty (30) calendar days and at its own cost  
37 and expense, dismantle and remove all of its personal property from the Premises. Any such  
38 property not removed at the expiration of this Lease in accordance with the preceding sentence  
39 and the Tenant's continued failure to remove the same within thirty (30) calendar days after receipt  
40 of notice from the City, shall be deemed abandoned and, at the election of the City, shall become

1 the property of the City without payment of any kind to the Tenant, without increasing the City's  
2 liability to the Tenant, and for any disposition of it as the City decides to make.

3 c. Within ten (10) calendar days of vacating, the City shall tour the Premises, with the  
4 Tenant present if possible, to determine the condition of the Premises. Any items determined to  
5 be in need of correction or repair shall be corrected or repaired by the City, and shall be invoiced  
6 by the City and paid by the Tenant within thirty (30) calendar days of such invoicing.

7 **25. Damage to Premises.**

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

19 **26. Modification.**

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

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

27 **27. Representations and Warranties.**

28 The Tenant represents and warrants to the City that:

29 a. The Tenant is a limited liability company organized under the laws of the State of  
30 Maryland, and is thus qualified to do business in and is in good standing with the State of  
31 Maryland, and is duly authorized according to its governing documents to conduct the business  
32 in which it is engaged and as described in this Lease.

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

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

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

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

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

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

9 **28. Access to Records.**

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

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

20 **29. Remedies Cumulative and Concurrent.**

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

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

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

34 **31. Independent Contractor Status.**

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

1 **32. Binding Effect.**

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

4 **33. Governing Law.**

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

8 b. The parties waive jury trial in all actions initiated pursuant to this Lease.

9 **34. Recitals.**

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

11 **35. Severability.**

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

15 **36. Survival.**

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

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

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

20 **38. Authorization.**

21 This Lease is authorized by the City Council pursuant to Ordinance O-30-21.

22 **39. Counterparts.**

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

26 **40. Notice.**

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

31 To the City: City Manager  
32 160 Duke of Gloucester Street



Annapolis, Maryland 21401

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

To the Tenant: McGarvey's Annapolis, LLC  
8 Market Space  
Annapolis, Maryland 21401  
Attn: Kevin Havens, khavens@mcgarveysannapolis.com

**40. Guaranty for Other Tenants.**

If any of the Other Tenants default, abandon, or otherwise stop using their leased portion(s) of the Property during the Original Term or any Renewal Term (each a "Defaulted Lease"), then the Tenant shall coordinate with the remaining Other Tenants to have either the Tenant or one of the remaining Other Tenants assume the Defaulted Lease, with the Defaulted Lease cost paid by the assuming party. Such assumption of a Defaulted Lease shall be documented through a written amendment to the assuming party's lease for the Property.

**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:

McGARVEY'S ANNAPOLIS, LLC

\_\_\_\_\_

By: \_\_\_\_\_  
Name: Kevin Havens (Seal)  
Title:

ATTEST:

CITY OF ANNAPOLIS

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

By: \_\_\_\_\_  
Gavin Buckley, Mayor (Seal)

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Office of Law  
D. Michael Lyles, City Attorney

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**ATTACHMENT A  
DEED**

See attached pages.

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**ATTACHMENT B  
PREMISES**

See attached page.

**ATTACHMENT C  
PURPOSE**

The following Tenant business-related uses are permitted under the terms of the Lease, and considered as part of the Purpose as defined in Paragraph 2(a) of the Lease:

- 1) Outdoor dining;
- 2) Tenant business-related special events;
- 3) Festivals;
- 4) Markets;
- 5) Event watch parties;
- 6) Movie nights;
- 7) Live music;
- 8) Recreational events;
- 9) Vendor booths;
- 10) Charity events; and
- 11) Tented events for inclement/cold weather.

These uses are subject to the terms and conditions of the Lease, as well as all applicable laws, regulations, and other statutory permitted governmental oversight. For uses numbered 2 through 10, the Tenant shall complete and submit a City Special Events Application and Agreement to the City Development and Events Specialist at least thirty (30) calendar days in advance of any such use, not for approval, but for informational purposes only to allow for coordination of City resources, traffic control, and emergency management as applicable. The Tenant shall not be required to pay any Application Fees, but may be required to pay Location Fees and/or Service Fees, as defined in that Application, as applicable to each use.