



Legislation Details (With Text)

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File created: 3/31/2016 **In control:** City Council

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Title: Lease of Public Parking Lots to FRESHFARM Markets, Inc. - For the purpose of authorizing a Lease of municipal property located at Parcel 1246, Parcel 1248, and Parcel 1256 as indicated on Attachment A of the lease, each and every Sunday from May 1, 2016 through November 20, 2016 from 6 a.m. to 1 p.m., expressly excluding April 24, 2016 (which is reserved for the Spring 2016 Boat Show), and further expressly excluding October 9, 2016 and October 16, 2016 (which are reserved for the Fall 2016 Boat Show) to FRESHFARM Markets, Inc.

Sponsors: Joe Budge, Michael J. Pantelides, Rhonda Pindell Charles

Indexes: Economic Matters Committee, Rules and City Government Committee

Code sections:

Attachments: 1. O-17-16 FreshFarmMkt Ordinance.pdf, 2. O-17-16 Staff Report.pdf, 3. O-17-16 Supplemental Staff Report.pdf, 4. O-17-16 Fiscal Impact.pdf, 5. O-17-16.pdf

Date	Ver.	Action By	Action	Result
4/25/2016	1	City Council	declare the public hearing closed	
4/25/2016	1	City Council	adopt on second reader	Pass
4/25/2016	1	City Council		
4/25/2016	1	City Council	adopt on third reader	Pass
4/11/2016	1	City Council	refer	
4/11/2016	1	City Council	adopt on first reader	Pass

Lease of Public Parking Lots to FRESHFARM Markets, Inc. - For the purpose of authorizing a Lease of municipal property located at Parcel 1246, Parcel 1248, and Parcel 1256 as indicated on Attachment A of the lease, each and every Sunday from May 1, 2016 through November 20, 2016 from 6 a.m. to 1 p.m., *expressly excluding* April 24, 2016 (which is reserved for the Spring 2016 Boat Show), and further *expressly excluding* October 9, 2016 and October 16, 2016 (which are reserved for the Fall 2016 Boat Show) to FRESHFARM Markets, Inc.

**CITY COUNCIL OF THE
City of Annapolis**

Ordinance 17-16

**Introduced by: Alderman Budge, Mayor Pantelides
and Alderwoman Pindell Charles**

**Referred to
Economic Matters
Rules and City Government**

AN ORDINANCE concerning

Lease of Public Parking Lots to FRESHFARM Markets, Inc.

FOR the purpose of authorizing a Lease of municipal property located at Parcel 1246, Parcel 1248, and Parcel 1256 as indicated on Attachment A of the lease, each and every Sunday from May 1, 2016 through November 20, 2016 from 6 a.m. to 1 p.m., *expressly excluding* April 24, 2016 (which is reserved for the Spring 2016 Boat Show), and further *expressly excluding* October 9, 2016 and October 16, 2016 (which are reserved for the Fall 2016 Boat Show) to FRESHFARM Markets, Inc.

WHEREAS, FRESHFARM Markets, Inc. (“Lessee”), desires to lease certain municipal property for the purpose of conducting an open-air farmers market; and

WHEREAS, the Annapolis City Council finds that a farmers market would be a desired public mercantile use for City residents; and

WHEREAS, a lease setting forth terms of the rental has been prepared and is considered satisfactory; and

WHEREAS, the Annapolis City Council finds that the lease of the property is authorized by Section 7.28.010 of the Annapolis City Code; and

WHEREAS, the Annapolis City Council finds that the lease of the property for a farmers market will better serve the public need for which the property was acquired; and

WHEREAS, Article III, Section 8 of the Charter of the City of Annapolis requires the passage of an ordinance to authorize the leasing of City-owned property.

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL

that the proposed Lease between the City of Annapolis and Lessee for the rental of certain municipal property located at Parcel 1246, Parcel 1248, and Parcel 1256 as indicated on Attachment A of the lease, also known as the Donner Lot and the Public Parking Lot between the Fleet Reserve and the site formerly known as Fawcett Boat Supplies, each and every Sunday from May 1, 2016 through November 20, 2016 from 6 a.m. to 1 p.m., *expressly excluding* April 24, 2016 (which is reserved for the Spring 2016 Boat Show), and further *expressly excluding* October 9, 2016 and October 16, 2016 (which are reserved for the Fall 2016 Boat Show), subject to prior leases already approved by the City Council, a copy of which is attached hereto and made a part hereof, is hereby approved, and the Mayor is authorized to execute the Lease on behalf of the City of Annapolis.

SECTION II: AND, BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL

that pursuant to Section 6.04.210D3 of the City Code, the Annapolis City Council hereby waives that portion of each monthly fee for permits and approvals in excess of \$50.00 associated with Lessee’s use of City facilities and services in connection with the use of the property, except as otherwise specified in the Lease.

SECTION III: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL

that this Ordinance shall take effect from the date of its passage.

EXPLANATION

CAPITAL LETTERS indicate matter added to existing law.

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

Underlining indicates amendments.

LEASE

Authorized by O-17-16

This Lease is made this ____ day of _____, 2016, by and between the City of Annapolis, a municipal corporation of the State of Maryland ("Lessor") and FRESHFARM Markets, Inc., a Washington, D. C. non-profit corporation ("Lessee").

Whereas, the Lessee is a regionally recognized nonprofit organization building a vibrant local food movement in the greater metro DC area that supports the region's farmers; and

Whereas, the Lessee's mission is to connect city dwellers with farmers and their locally-grown food, to educate the public about food and farming issues and to provide economic opportunities for farmers; and

Whereas, the parties desire to enter into a lease for that purpose and to set forth their respective responsibilities; and

Whereas, the City is authorized to lease land pursuant to Article III, Section 8, of the City Charter to better serve the public need for which the land was acquired.

Now, therefore, in consideration of these premises and the mutual terms and conditions of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. Premises and Term

The Lessor leases to the Lessee, and the Lessee leases from the Lessor, for the purpose of holding the Annapolis City Dock FRESHFARM Market, Parcel 1246, Parcel 1248, and Parcel 1256, that land known as the Donner Parking Lot and the Public Parking Lot between the Fleet Reserve and the property at 110 Compromise Street (formerly, "Chandler, LLC"), as shown in **Exhibit A** attached to this Agreement (the "Premises"), each and every Sunday from May 1, 2016 through November 20, 2016 from 6 a.m. to 1 p.m., *expressly excluding* April 24, 2016 (which is reserved for the Spring 2016 Boat Show), and further *expressly excluding* October 9, 2016 and October 16, 2016 (which are reserved for the Fall 2016 Boat Show).

2. Rent

a. Rent shall be Fifty Dollars (\$50.00) per month throughout the term of this Lease.

b. Pursuant to City Code, Section 6.04.210.D.3., the Lessor hereby waives any additional rent, including but not limited to fees for traffic control services if any are provided, parking meters authorized for use by Lessee, inspections, permit applications and rental beyond that stated above, except as provided herein.

3. Use of Premises

a. The Premises may be used by the Lessee for activities authorized by the Lessee and identified in this Lease.

b. This Lease in no way creates an obligation upon the Lessor to furnish any services, materials or equipment for the Lessee's farmer's market, except as specifically provided in this Lease.

4. Exhibitors

a. The Lessee shall provide to the Lessor, not later than May 1, 2016, a complete list of all exhibitors, vendors displays, activities, festivities, and operations associated with this Lease, which shall not be amended without the Lessor's written consent.

b. The Lessee shall use its best efforts to contract with Annapolis/Anne Arundel County area farmers in all matters related to the farmers' market.

5. Licenses/Taxes

a. Exhibitors or vendors who are permitted to sell any item at the farmers' market shall obtain and produce to the Lessor upon request all required non-City licenses and pay all required Federal, State, County and City taxes and fees.

b. The Lessee shall satisfy any of the Lessor's licensing requirements for such exhibitors or vendors.

6. Transportation & Parking Plan

a. The Lessee shall prepare and submit to the Lessor's Director of Transportation, no later than May 1, 2016, a transportation plan with a parking element, which shall address matters specified by the Director.

b. Except for public ways within the Premises, the plan shall not provide for the closure of any street or restrict parking to those associated with the farmers' market.

c. Upon receipt of the plan, the Director of Transportation shall make copies available to relevant agencies and to interested parties who have requested a copy and shall arrange for a meeting, if determined to be necessary by that Director, with relevant agencies and representatives of interested parties to review the plan.

d. The Director of Transportation shall approve this plan before this Lease commences.

7. Pre-Market Inspection

a. Before the farmers' market opens to the public, the Lessee's representative shall meet with representatives of Lessor's Police Department, Fire Department, Emergency Management, Harbormaster, Department of Neighborhood and Environmental Programs, and Department of Public Works to inspect the Premises and nearby areas to determine compliance with the Lessor's requirements.

b. Written approval by all such representatives is required before the Lessee may open the farmers' market to the public.

c. The Lessor shall not unreasonably refuse permission to open the farmers' market unless a threat to health or safety has been identified by the Lessor to the Lessee.

d. Following the pre-market inspection, at all times during this Lease, the Lessee shall promptly comply with all reasonable directives of the Lessor which the Lessor determines in its sole discretion are necessary to bring the Lessee and activities on the Premises into compliance with this Lease, the City Code, and the Lessor's public safety requirements.

8. Interior Construction.

a. The Lessee shall have the right to construct, install or erect upon the Premises such seats, booths, tents, exhibits and any other apparatus or structure which the Lessee may deem necessary or desirable for purposes related to this Lease.

b. The Lessee shall not enclose the Premises in such a manner as to limit entry onto the Premises or any part thereof.

9. Permits

a. The Lessee shall obtain any and all zoning permits, licenses and authorizations required to be obtained from the Lessor for the purpose of constructing or erecting temporary structures on the Premises and for operating the farmers' market.

b. All other Federal, State or County permits which may be required shall be the responsibility of Lessee.

10. Alcohol

a. Except as provided in this Paragraph 10, there shall be no beer, wine or liquor consumption or other open containers of alcoholic beverages on the Premises.

b. The Lessee may offer wine from a Maryland winery for off-Premises consumption in accordance with all applicable license requirements and provided that the Lessee furnishes a copy of such license to the City Clerk for notification to the Alcoholic Beverage Control Board. The Licensee shall not sell wine for consumption at the farmers' market or on the Premises, but may provide samples not to exceed one (1) fluid ounce per brand and may sell unopened bottles of wine on the Premises during the hours of operation specified in this Lease.

11. Food Sales

The Lessee may offer traditional farmers' market food, beverages and produce for sale on the Premises during the hours of operation specified in this Lease.

12. Music

The Lessee may play non-amplified music on the Premises during the hours of operation specified in this Lease.

13. Conduct of Operations

a. The Lessee shall conduct its operations in an orderly and commercially reasonable manner so as not to annoy, disturb, whether by noise or otherwise, endanger or be offensive to others.

b. The Lessee shall use and maintain the Premises in such manner so as to avoid the creation of any nuisance from obnoxious odors, smoke, noxious gases, vapors, dust, noise or otherwise, and shall not keep, store, display or use any explosives or explosive devices at the Premises.

c. The Lessee shall maintain the Premises in a clean, orderly and safe condition so as to avoid injury to persons and property.

d. If the Lessee fails to comply with the terms of this Paragraph 13, the Lessor shall have the authority to require the Lessee to immediately cease and desist all activities and operations on the Premises and may immediately declare the Lessee in breach of this Lease and immediately terminate this Lease without prior notice to the Lessee.

14. Trash and Recycling

a. The Lessee, at its sole expense, shall provide the number of trash and recycling containers within the Premises as required by the Lessor's Director of Public Works, in his/her sole discretion, during this Lease and shall provide for the prompt removal of these containers by contractors approved by the Lessor.

b. The Lessor, if necessary, shall aid the Lessee in obtaining trash and recycling containers.

15. Cleanliness

a. The Lessee, at its sole expense, shall be responsible for keeping the Premises free of trash and shall place all in trash containers.

b. The Lessee shall at all times police the Premises for trash removal.

16. Security Services

a. The Lessee shall be solely responsible for security within the Premises during the hours of operation specified in this Lease.

b. The Lessee shall establish a security liaison with the Lessor's Police Department and coordinate all Premises security with the Lessor's Police Department according to its requirements.

c. In addition to such other requirements as the Lessor's Police Department may impose, the Lessee shall, at its sole expense, hire licensed professional security officers who shall provide security within the Premises during hours of operation specified in this Lease at such staffing levels as the Lessor's Police Department may, in its sole discretion, require.

d. The Lessee shall produce to the Lessor at any time the Lessor requests all credentials of the security officers retained by the Lessee and may reject the hiring or retention of any security officer for reasonable cause.

17. Fire Services

Following the erection of all booths and other structures at the Premises, but before the farmers' market opens to the public, the parties shall meet at the Premises to assure compliance with the Lessor's Fire Department regulations and accessibility of fire lanes and turning radius.

18. Utility Services

- a. The Lessor shall make available to the Premises existing water and electricity facilities.
- b. The Lessee, at its own expense, shall install any temporary electrical equipment, lines and devices required to provide power to the Premises, in compliance with the City Code and the National Electric Code.
- c. The Lessee shall not operate any such equipment, lines or devices until inspected and approved by the Lessor's Department of Neighborhood and Environmental Programs.

19. Other Services

The parties, if necessary, shall coordinate other services in advance of the term of this Lease.

20. Removal of Lessee's Property

- a. No later than 1 p.m. of every market day, the Lessee shall remove all of its property from the Premises with the exception of such signs as approved in writing by the Lessor's Historic Preservation Commission.
- b. If the Lessee fails to remove any of its property, either during or at the termination of this Lease, the Lessor reserves the right to remove and store it at the Lessee's sole expense or, as an alternative, to leave it at the Premises.
- c. In either case, the Lessor shall charge the Lessee a per diem rental for storage of its property at a rate generally charged by private storage companies in Anne Arundel County, Maryland.
- d. The Lessor shall bear no responsibility or liability for damage to or expense incurred as a result of property left, removed or stored under the provisions of this Paragraph 20.
- e. The Lessee shall pay to the Lessor any expenses or charges under this Paragraph 20 within thirty (30) calendar days after delivery of any bill by the Lessor to the Lessee.
- f. If any property is not claimed by the Lessee within sixty (60) calendar days after the termination of this Lease, the Lessor, in its sole discretion, may sell such property at private or public sale under such terms as the Lessor may deem appropriate and apply such proceeds as it may deem appropriate in its sole discretion.

21. Liens

- a. The Lessee hereby consents to and the Lessor shall have a lien upon all goods, personal property and fixtures of the Lessee located upon the Premises for any and all unpaid rent or charges which arise under this Lease.

b. The Lessee hereby consents to and the Lessor shall have the power to impound and retain possession of such goods, personal property and fixtures until all such rent and charges due under this Lease have been paid, in full, to the satisfaction of the Lessor.

c. If such charges remain unpaid thirty (30) calendar days after the termination of the term of this Lease, the Lessor shall have the power to sell such property at public auction and apply the receipts from such auction to all such unpaid charges.

22. Quiet Enjoyment and Lessor Access to Premises

a. Expressly subject to Paragraph 22(b) of this Lease, and as long as the Lessee is not in material breach of this Lease, the Lessee shall be entitled to peacefully hold and quietly enjoy the Premises in a manner consistent with and subject to this Lease without any disturbance or hindrance from the Lessor or from any other person claiming through the Lessor, except that the Lessor or others claiming through the Lessor may enter onto the Premises to effect necessary repairs to their own facilities for public safety and City Code compliance reasons.

b. The Lessee shall cooperate with the Lessor to effect all access to the Premises, as may be required pursuant to this Paragraph 22.

c. If Lessor's right of entry pursuant to Paragraph 22(b) causes unreasonable interference with Lessee's use of the Premises under this Lease, the Lessee's sole remedy shall be to terminate this Lease for convenience upon seven (7) calendar days prior written notice to the City. Upon Lessee's termination for convenience, the Lessor shall be entitled to take possession and control of the Premises immediately upon the eighth (8th) day after such notice, and the Rent shall be prorated to correspond with such eighth (8th) day. The Lessee shall comply with Paragraph 39 of this Lease in vacating the Premises.

d. No action of Lessor or Lessor's contractors, consultants, vendors, agents, and/or representatives on the Premises and pursuant to this Paragraph 22 shall be deemed a breach of this covenant of quiet enjoyment if reasonable access to the Premises is provided to Lessee.

23. Payment

a. The Lessee shall make all payments (including Rent) due under this Lease by check, payable to the City of Annapolis, and deliver the payments to the Lessor's Director of Finance, 160 Duke of Gloucester Street, Annapolis, Maryland, 21401.

b. In addition to all other amounts due pursuant to this Lease, the Lessee shall pay the Lessor a monthly late fee of 1.5% (18% per annum) of any payment required that is more than sixty (60) calendar days past due, until paid.

24. Remedies

a. Any and all duties, liabilities and/or obligations imposed upon or assumed by the Lessee by this Lease shall be taken or construed as cumulative and not as a limitation or restriction upon any or all of the other duties, liabilities, or obligations imposed upon or assumed by Lessee under this Lease.

b. All remedies allowed by this Lease shall be construed to be cumulative and in addition to any other remedies provided in law or equity.

c. The parties shall have the right to seek and obtain in any court of competent jurisdiction an injunction, without the necessity of posting a bond, to restrain a violation by the other party of any term of this Lease.

d. In no case shall a waiver by either party of the right to seek a remedy under this Paragraph 24 constitute a waiver of any other or further such right.

25. Venue, Waiver of Jury Trial and Governing Law

a. Venue for all administrative and judicial proceedings which result from this Lease shall be the courts of Anne Arundel County, Maryland.

b. The parties hereby expressly waive trial by jury in any such judicial proceeding.

c. The laws of the State of Maryland shall govern all matters relating to this Agreement.

26. Authority to Lease.

If it is ever determined by a court of competent jurisdiction that the Lessor lacks the authority to lease any portion or all of the Premises, the Lessor shall not be liable for any losses or damages sustained by the Lessee as a result thereof.

27. Impossibility of Performance

If, for any reason, an unforeseen event not the act of the Lessor occurs, including but not limited to flood, severe weather, fire, casualty, act of God, labor strike or other unforeseen occurrence which renders use of the Premises impossible for any period of this Lease, the Lessee shall have no right to any claim for damages against the Lessor, but the Lessee shall not be liable for the payment of Rent for the period that it cannot use the Premises.

28. Insurance

a. The Lessee shall, at its own expense, obtain and keep in full force and effect a policy of comprehensive commercial general liability insurance for all loss, costs, damages and expenses suffered by any person due to personal injury arising out of the activities permitted by this Lease in the amount of One Million Dollars (\$1,000,000.00) per person and Two Million Dollars (\$2,000,000.00) in the aggregate per occurrence, and One Million Dollars (\$1,000,000.00) for damage to any property, including the Premises and property owned by Lessor, due to or alleged to be due to (1) an act, omission or the negligence of the Lessee, its officers, agents, employees contractors, patrons, guests or invitees, or (2) to the use of the Premises or any part thereof by the Lessee, its officers, agents, employees, contractors, patrons, guests or invitees.

b. The insurance policy shall specifically name the City of Annapolis, and in their capacity as such, the Mayor, council members, department directors, and all other officers, employees, contractors and agents of the City of Annapolis, as additional insureds.

c. The insurer shall be authorized to write the required insurance, approved by the Insurance Commissioner of the State of Maryland, and subject to the reasonable approval of Lessor's City Attorney.

d. The form and substance of the policy shall be subject to reasonable approval by Lessor's City Attorney and shall be submitted to the City Attorney for such approval not later than May 1, 2016.

e. The policy or the Certificate for the policy shall contain a statement that the insurer shall not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, whether at the request of the Lessee or for any other reason, except after thirty (30) calendar days advance written notice sent by the insurer or the Lessee to the City Attorney by certified mail, postage prepaid, with return receipt requested.

f. If the policy is cancelled during the term of this Lease and the Lessee is unable to obtain an equivalent policy, the Lessor may immediately declare Lessee in breach of this Lease and immediately terminate this Lease without prior notice to Lessee.

29. Vendor Insurance

a. The Lessee shall provide documentation to the Lessor's City Attorney not later than May 1, 2016, that each participating vendor at the farmers' market is adequately covered to the satisfaction of the City Attorney by general and product liability insurance.

b. All terms that apply in Paragraph 28 shall apply in this Paragraph 29.

c. For vendors added after May 1, 2016, the Lessee shall provide the same documentation at least one (1) full calendar week prior to the commencement date of the vendor's participation in the farmers' market and such vendors shall not be permitted to participate in the farmers' market until the City Attorney approves the policy.

30. Indemnification

a. The Lessee shall forever indemnify, defend and hold the Lessor, its Mayor, council members, department directors, and all of its other officers, employees, contractors and agents harmless from and against any and all claims, suits, actions, judgments, and liability for loss, injury, damages and/or expenses suffered or alleged to have been suffered by any person or to the Premises or to any property due to or alleged to be due to (1) an act, omission or the negligence of the Lessee, its officers, agents, employees, contractors, patrons, guests or invitees, or (2) the use of the Premises or any part thereof by the Lessee, its officers, agents, employees, contractors, patrons, guests or invitees.

b. The Lessee shall reimburse the Lessor, within thirty (30) calendar days after demand for such reimbursement, for any damage done to the Lessor's buildings, facilities, equipment or property caused by the negligence of the Lessee, its officers, agents, employees, contractors, patrons, guests or invitees during the Lessee's use and/or occupancy of the Premises or any part thereof or to any other property.

c. Such indemnification does not limit any immunity to which the Lessor or its Mayor, council members, department directors and all of its other officers employees, contractors and agents, and includes all costs and expenses, including attorney's fees, whether or not related to administrative or judicial litigation.

31. Immunities

The Lessor reserves any and all immunities, partial or total, statutory or common law, in any proceeding related to this Lease, to the activities referred to in this Lease or to the use of the Premises or any part thereof

before, during or after the term of this Lease. Such reservation of rights shall extend to any claim made by or through the Lessee and to any claim made by or through any third party

32. Assignment

The Lessee shall not assign or transfer its interest in or its rights or obligations pursuant to this Lease without the prior written consent of the Lessor.

33. Non Agent

The Lessee acknowledges it is an independent contracting party and not the agent or employee of Lessor.

34. Compliance with All Laws

The Lessee shall comply with all laws, ordinances and statutes applicable to the Premises, or any part thereof, and the use thereof, and to pay all taxes or charges imposed by law in connection with Lessee's use and occupancy of the Premises.

35. Contact Persons

For purposes of coordinating inspections, providing notices and other matters set forth under this Lease, except as otherwise provided, the parties designate the following contact persons:

Lessor: Director, DNEP
145 Gorman Street, 3rd Floor
Annapolis, Maryland 21401
Phone No. 410-263-7946

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

Lessee: FRESHFARM Markets, Inc.
P.O. Box 15691
Washington, DC 20003
Attention: Ann Harvey Yonkers
Phone No. 202-362-8889 or 202-486-9310

36. General Powers

Nothing herein shall be construed to preclude the Lessor from exercising its general public safety powers as it deems appropriate to protect the public safety, interest and welfare.

37. Termination for Breach or Violation

The Lessor shall be entitled to immediately terminate this Lease for any breach or violation by the Lessee of this Lease.

38. Termination for Other Reasons

- a. If the Lessor, in its sole discretion, determines that, for purposes and conveniences related to the public interest of the City of Annapolis, it is necessary to terminate this Lease before the end of its term, the Lessor shall provide thirty (30) calendar days written notice, by certified mail, postage prepaid, to the Lessee to vacate, and shall be entitled to take possession and control of the Premises immediately upon the thirty-first (31st) day after such notice.
- b. The Lessee shall comply with all terms of this Lease that otherwise relate to its vacating the Premises upon the expiration of the Lease.
- c. The Lessor shall make reasonable attempts to relocate the Lessee's farmers' market to another location for the balance of the term of this Lease.
- d. If Lessee does not accept any relocation offered by the Lessor with seven (7) calendar days of the date offered, this Lease shall terminate at such time.

39. Condition of Premises At End of Lease

At the end of this Lease, the Lessee, at its sole expense, shall return the Premises to the same or superior condition than received, natural wear and tear excepted.

40. Time is of the Essence

- a. Time is of the essence in the performance of this Lease.
- b. Time for performance shall not be extended for any reason, except by mutual agreement of the parties.

41. Modifications

- a. The parties may, at any time, in writing, mutually modify only the following terms of this Lease:
 1. the location of the Premises to be leased, provided such modifications do not result in an increase or enlargement of the area of the Premises;
 2. the dates and hours during which the Premises shall be used, provided such modifications do not result in an increase or enlargement of the dates or times set forth in Paragraph 1 of this Lease; and
 3. the Lessee's obligations with regard to security on the Premises and the payment of fees for City inspections of the Premises.
- b. Following a request by either party for modification, pursuant to Article III, Section 8 of the City Charter, the Lessor's Mayor may negotiate and agree to any modification which the Lessee may propose without the necessity of an additional ordinance approving the modification.
- c. Any modification shall be set forth in writing executed by the parties, but shall not take effect until the City Council has approved the modification.

42. Binding Effect

This Lease is binding upon the parties and their respective successors and assigns.

43. Integration.

This Lease constitutes the entire agreement between the parties regarding its subject matter. There are no other terms or understandings, oral or written, between the parties with respect thereto.

Witness the signatures and seals of the parties.

FRESHFARM Markets, Inc.

Witness By: _____
Ann Harvey Yonkers, (Seal)
Co- Executive Director

State of Maryland, County of Anne Arundel, to wit:

I hereby certify that on this ____ day of _____, 2016, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Ann Harvey Yonkers, known to me or satisfactorily proven to be the person who has signed this Agreement, and she has signed this Agreement in my presence and acknowledged that she is Co-Executive Director of FRESHFARM Markets, Inc., and authorized to sign this Agreement on its behalf and to bind it thereby, and that this Agreement is her free and voluntary act and the free and voluntary act of FRESHFARM Markets, Inc. made for the purposes set forth therein.

Witness my signature and Notary Seal.

Notary Public
My Commission expires:

Witness By: _____
Bernadine Prince, (Seal)
Co-Executive Director

State of Maryland, County of Anne Arundel, to wit:

I hereby certify that on this ____ day of _____, 2016, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Bernadine Prince, known to me or satisfactorily proven to be the person who has signed this Agreement, and she has signed this Agreement in my presence and acknowledged that she is Co-Executive Director of FRESHFARM Markets, Inc., and authorized to sign this Agreement on its behalf and to bind it thereby, and that this Agreement is her free and voluntary act and the free and voluntary act of FRESHFARM Markets, Inc. made for the purposes set forth therein.

Witness my signature and Notary Seal.

Notary Public
My Commission expires:

ATTEST: City of Annapolis

Regina C. Watkins-Eldridge, MMC
City Clerk

By: _____
Michael J. Pantelides (Seal)
Mayor

State of Maryland, County of Anne Arundel, to wit:

I hereby certify that on this ____ day of _____, 2016, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Michael J. Pantelides, known to me or satisfactorily proven to be the person who has signed this Agreement, and he has signed this Agreement in my presence and acknowledged that he is the Mayor of the City of Annapolis and authorized to sign this Agreement on its behalf and to bind it thereby, and that this Agreement is his free and voluntary act and the free and voluntary act of the City of Annapolis made for the purposes set forth therein.

Witness my signature and Notary Seal.

Notary Public
My Commission expires:

Approved for form and legal sufficiency:

City Attorney

Lease of the Donner Lot to FRESHFARM Markets Inc.

Exhibit A

