



Legislation Text

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File #: O-35-16, Version: 1

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**WYRE Lease Agreement** - For the purpose of approving the lease for certain City-owned property at 25 Silopanna Road for the use and maintenance of a radio tower, radio station, radio operations and transmitter space; and matters generally relating to said lease.

**CITY COUNCIL OF THE  
City of Annapolis**

**Ordinance 35-16**

**Introduced by: Mayor Pantelides**

**Referred to**

Finance

Rules and City Government

**AN ORDINANCE** concerning

**WYRE Lease Agreement**

**FOR** the purpose of approving the lease for certain City-owned property at 25 Silopanna Road for the use and maintenance of a radio tower, radio station, radio operations and transmitter space; and matters generally relating to said lease.

**WHEREAS**, the City is the fee simple owner of an improved parcel of land located at 25 Silopanna Road, Annapolis, Maryland and as more accurately described in a deed recorded at Liber 4881, folio 076 among the Land Records of Anne Arundel County; and

**WHEREAS**, the Tenant, under the different legal names of Silver Queen Broadcasting Corporation and Bay Broadcasting Corporation, leased a building on the Property for signal transmission of a radio station known as WYRE, including a transmission operations room and a tower pursuant to a series of lease agreements and amendments dating back to 1999; and

**WHEREAS**, the Tenant wishes to lease the Property for the use and maintenance of a radio station, radio tower, radio operations and transmitter; and

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

**WHEREAS**, Article III, Section 8 of the Charter of the City of Annapolis requires the passage of an ordinance

to authorize the lease; and

**SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL** that the Lease Agreement, a copy of which is attached hereto and made a part hereof, between Elixir Enterprises Corporation and the City of Annapolis for the lease of certain municipal property, is hereby approved and authorized.

**SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL** that in accordance with Article III, Section 8 of the Charter of the City of Annapolis, the proposed lease of City-owned property will better serve the public need for which the property was acquired.

**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

### CITY OF ANNAPOLIS LEASE AGREEMENT

This Lease Agreement (“Lease”) is made this \_\_\_\_\_ day of \_\_\_\_\_ 2016, by and between the City of Annapolis, a municipal corporation of the State of Maryland (“City”), and Elixir Enterprises Corporation, a Maryland corporation, its successors and assigns (collectively, the “Tenant”).

WHEREAS, the City is the fee simple owner of an improved parcel of land located at 25 Silopanna Road, Annapolis, Maryland and as more accurately described in a deed recorded at Liber 4881, folio 076 among the Land Records of Anne Arundel County (collectively, the “Property”); and

WHEREAS, the Tenant, under the different legal names of Silver Queen Broadcasting Corporation and Bay Broadcasting Corporation, leased a building on the Property for signal transmission of a radio station known as WYRE, including a transmission operations room and a tower (collectively, the “Premises”) pursuant to a series of lease agreements and amendments dating back to 1999; and

WHEREAS, the Tenant wishes to lease the Premises for the use and maintenance of a radio station, radio tower, radio operations and transmitter; 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. TERM

The City leases to the Tenant and the Tenant hereby leases from the City the Premises for a Term

commencing on the date of City Council approval and terminating on June 30, 2017 (the “Original Term”), unless terminated earlier in accordance with the terms of this Lease.

## 2. USE OF PREMISES

a. The Tenant may use and occupy the Premises during the Term of this Lease only for the sole purpose of the use and maintenance of a radio station, radio tower, radio operations and transmitter used for a radio station known as WYRE in accordance with the hours and conditions granted and approved by the Federal Communications Commission (collectively, the “Radio Station”), and for no other purpose whatsoever. The space on the Property leased to Chesapeake Children’s Museum, Inc. is expressly and specifically excluded from this Lease.

b. The Tenant accepts the Premises in “as is” condition. The City makes no representation or warranty with respect to the condition or state of the land, the Property, or the Premises, or its fitness for any particular use, and the City shall not be liable for any latent or patent defect thereon. Unless as otherwise expressly provided in this Lease, the City does not make, and specifically disclaims, any representations, warranties or covenants of any kind or character, express or implied, with respect to the nature, condition, economical, functional, environmental or physical condition of the Premises.

c. The Tenant shall not use or occupy or permit the Premises or the Property to be used or occupied in a manner which would in any way (1) violate any of the terms of this Lease; (2) make it difficult for either the City or the Tenant to obtain fire or other insurance required by this Lease at standard rates; (3) cause or create a public or private nuisance in or on the Premises or the Property; or (4) tend to impair or interfere with the character, reputation or appearance of the Premises or the Property.

## 3. RENT

a. As annual rent for the Premises, the Tenant shall pay unto the City Twenty Thousand Four Hundred Dollars and No Cents (\$20,400.00) (the “Rent”). The Rent shall be paid in one payment, in advance, on the effective date of this Lease, without deduction, setoff or counterclaim whatsoever, and without demand. Such payment shall be made payable to the “City of Annapolis” and shall be sent or delivered to the Finance Director, Finance Department, City Hall, 160 Duke of Gloucester Street, Annapolis, Maryland 21401.

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

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

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

#### 4. QUIET ENJOYMENT

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

#### 5. UTILITIES, SERVICES

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

b. The Tenant, at its sole cost and expense, shall arrange and pay 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 without the prior written consent of the City.

c. The Tenant, at its sole cost and expense, shall arrange and pay for any housekeeping services and janitorial work that are necessary for the operation of the Premises (other than space rented to other tenants), including, but not limited to, cleaning any and all bathroom facilities, cleaning windows and floors, and all other general and/or routine janitorial maintenance.

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

e. The Tenant, at its sole cost and expense, shall arrange and pay for routine grounds maintenance of the Premises, including adjacent to the building and radio tower.

#### 6. ALTERATIONS

a. The Tenant shall not make or cause to be made any alterations, additions, or improvements to the Premises without obtaining the prior written consent of the City that may be withheld in the City's sole and absolute discretion. All work done in accordance with any approved alterations, additions, or improvements shall be done in a good and workmanlike manner, by professionals licensed in the State of Maryland, in compliance with any necessary governmental permits and other approvals, and in accordance with all applicable laws and ordinances of any public authority having jurisdiction over the Premises.

b. The Tenant shall retain ownership of all of its trade and business equipment and furnishings from time to time installed on the Premises. The Tenant may remove any such fixtures, equipment or furnishings at any such time during the Term and shall remove all of it prior to the expiration of the Lease. Removal shall not cause any damage to the Premises or the Property. The Tenant shall pay for any damages it may cause, which shall be due and payable by the Tenant within thirty (30) calendar days of City invoicing. Any such property not removed at the expiration of the Term shall be deemed abandoned and, at the election of the City, shall become the property of the City without payment of any kind to the Tenant, without increasing the City's liability to the Tenant, and for any disposition of it the City decides to make.

#### 7. REPAIRS AND MAINTENANCE

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

b. Prior to the Tenant repairing, replacing or otherwise altering any aspect of the Premises or the Property, the Tenant shall provide the City with thirty (30) calendar day prior written notice specifying the need for and nature of any and all such repairs, replacements or alternations, and providing the City with a copy of all applicable contracts or agreements with any third party hired by the Tenant to perform such repairs, replacements or alterations. The Tenant or its contractors shall not start or undertake any such repairs, replacements or alterations without the prior written approval of the City, and without first obtaining all necessary permits and governmental approvals. Such repairs, replacements or alterations shall be made and rendered by professional contractors licensed in the State of Maryland, and shall comply in all respects with all applicable federal, state, local and City laws, ordinances and regulations, including, but not limited to, zoning, building and fire code requirements.

c. If the City is required to make any repairs to such portions of the Premises by reason, in whole or in part, of the negligent or willful act or failure to act by the Tenant or the Tenant's employees, agents, contractors, guests or invitees, the City may collect the cost of any and all such repairs from the Tenant as Additional Rent, which shall be due and payable by the Tenant within thirty (30) calendar days of City invoicing.

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

## 8. SIGNS

The Tenant shall not to 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 on the glass or any window or door of the Premises, without first obtaining the City's written consent. The Tenant shall maintain any sign, billboard, marquee, awning, decoration, placard, lettering or advertising matter or other thing of any kind, as may be approved by the City, and shall repair and replace when necessary to keep in good condition and repair at all times.

## 9. DRIVEWAYS, FOOTWAYS AND PARKING AREAS

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

b. Except for purposes of the Tenant complying with Section 5(e) of this Lease, the City shall at all times have full and exclusive control, management and direction of all driveways, footways and parking areas. The City may restrict access to, temporarily close, construct, adjust, reduce or perform such other acts to all or any portion of the parking areas or the facilities as the City determines to be necessary or appropriate.

c. The City shall have the right, but not the duty, to police all driveways, footways and parking areas.

## 10. NON-DISCRIMINATION

a. 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, or disability.

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

## 11. CITY RIGHTS

a. Upon reasonable prior notice from the City to the Tenant, the City shall have the exclusive right to use all or any part of the roof and rear and side walls of the Premises for any purpose; to erect additional stories or other structures over all or any part of the Premises or the Property; and to erect and maintain in connection with the construction thereof, temporary scaffolds and other aids to construction on the exterior of the Premises. In such event, the City may temporarily and reasonably limit or restrict access to the interior of the Premises.

b. Upon reasonable prior notice from the City to the Tenant, the City shall have the right to use the Premises and the Property for all purposes, as long as such use does not preclude the Tenant's reasonable use of the Premises, including the Tenant's radio transmissions, as described herein.

## 12. ASSIGNMENT

The Tenant shall not assign or sublet this Lease, or permit other persons to occupy the Premises, or grant any license or concession for the Premises without the prior written approval of the City.

## 13. SECURITY, PROPERTY LOSS DAMAGE

a. The Tenant assumes all risks associated with the security of the Premises (other than space rented to other tenants) and the Property. The City shall have no obligation or duty with regard to security. The Tenant shall police, light and maintain the Premises (other than space rented to other tenants) and the Property 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. If the Tenant desires to issue any no trespass notices or exclude any individual from the Premises and/or the Property, 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, contractors and representatives (the "Indemnified Parties") 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 or the Property, 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 tenants or persons in the Premises or the Property, 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 Indemnified Parties harmless from any claims arising out of damage to the same, including subrogation claims by the Tenant's insurance carrier.

#### 14. COMPLIANCE WITH LAWS

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

b. The Tenant shall be solely responsible for the acquisition of all permits and any other items necessary for the transmittal of radio frequencies from and the use of the Radio Station at the Premises.

#### 15. INSURANCE

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

1. Commercial General Liability Insurance Policy, including contractual liability and property liability insurance for the Premises, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of this Lease, but no less than \$100,000.00 per person and \$300,000.00 per occurrence in the aggregate, using a Combined Single Limit for bodily injury and property damage.

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

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

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

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

contractors.

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

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

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

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

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

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

## 16. INDEMNIFICATION

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

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

c. 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.

d. 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. The indemnification for attorney fees applies whether or not the City Attorney or other attorney handles the defense.



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

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

#### 17. IMPAIRMENT OF THE CITY'S TITLE

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

#### 18. LIENS AND ENCUMBRANCES

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

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

#### 19. TAXES AND ASSESSMENTS

a. The Tenant shall pay all impositions including all state, county and City taxes (including real estate ad valorem, 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 of this Lease. 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, with appropriate pro-rata in case of fractional years.

b. Taxes 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.

#### 20. THE CITY'S RIGHT OF ENTRY

a. The City and its employees, representatives, agents, and servants, including any builder or contractor employed by the City, shall have the absolute unconditional right at any and all reasonable times with prior notice to the Tenant (except in the case of an emergency where no such prior notice is required) to enter the Premises or the Property for any of the following purposes: (a) to inspect the Premises and the Property; (b) to make such repairs and/or changes in the Premises or the Property as the City may deem necessary or proper; (c) to enforce and carry out any provision of this Lease; (d) for any purpose relating to the safety, protection or preservation of the Premises or the Property; or (e) for any other purpose related to the enforcement of this Lease.

b. The Tenant shall provide the City with a complete and current set of keys to all entrances and exits to the Premises.

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

## 21. RESERVATION OF GOVERNMENTAL AUTHORITY

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

## 22. DEFAULTS OR BREACH

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

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

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

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

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

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

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

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

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

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

d. The City shall afford the Tenant at least thirty (30) calendar days, with any reasonable extension as needed, to cure any default or breach of this Lease before declaring a Default or Breach and terminating this Lease.

## 23. TERMINATION FOR CONVENIENCE

a. The City may terminate this Lease for convenience, for any reason, and at any time by providing thirty (30) calendar days prior written notice to the Tenant. Any such termination of this Lease by the City shall not discharge the Tenant from any obligation it may have to the City by reason of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events or basis of which shall occur or arise) prior to such termination, whether the same be known or unknown at the time of such termination.

b. If the lease between the City and Chesapeake Children's Museum, Inc. for the Property should be terminated for any reason, the City, in its sole discretion, may choose to terminate this Lease for convenience by providing thirty (30) calendar days prior written notice to the Tenant. Any such termination of this Lease by the City shall not discharge the Tenant from any obligation it may have to the City by reason of any transaction, loss, cost, damage, expense or liability which shall occur or arise (or the circumstances, events or basis of which shall occur or arise) prior to such termination, whether the same be known or unknown at the time of such termination.

## 24. SURRENDER OF PREMISES

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. If the Premises are not surrendered when required, the Tenant shall indemnify, defend and hold the Indemnified Parties harmless against loss or liability resulting

from the delay by the Tenant in vacating the Premises, including, without limitation, any claims made by any succeeding tenant or other occupant founded on such delay. Any holding over with the consent of the City after the termination of this Lease shall be construed to be a tenancy from month-to-month upon the same terms and conditions as provided in this Lease, to the extent applicable.

## 25. MODIFICATION

a. 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.

b. 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.

## 26. REPRESENTATIONS AND WARRANTIES

The Tenant represents and warrants to the City that:

a. The Tenant is a corporation organized under the laws of the State of Maryland, qualified to do business and in good standing in the State of Maryland, and authorized to conduct the business in which it is engaged and as described in this Lease.

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

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

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

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

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

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

## 27. ACCESS TO RECORDS

a. At any time 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, including, but not limited to, all contracts, invoices, payroll, and financial audits.

b. 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.

## 28. 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.

## 29. WAIVER OF REMEDIES FOR BREACH

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

## 30. 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.

## 31. BINDING EFFECT

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

## 32. GOVERNING LAW

a. 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.

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

## 33. RECITALS

The Recitals of this Lease are incorporated into this Lease.

## 34. 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.

35. SURVIVAL

Those sections in this Lease which by their nature are intended to survive, including, but not limited to, "Access to Reports", "Indemnification", "Defaults or Breach", and "Governing Law" shall survive the termination of this Lease.

36. TIME IS OF THE ESSENCE

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

37. AUTHORIZATION

This Lease is authorized by the City Council pursuant to O-35-16.

38. NOTICE

Any notice required to be delivered 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 Attorney  
160 Duke of Gloucester Street  
Annapolis, Maryland 21401

To the Tenant: Elixir Enterprises Corporation  
c/o Richard A. Dent  
4505 Dalton Road  
Chevy Chase, Maryland 20815  
(202) 316-8606  
[rad4505@yahoo.com](mailto:rad4505@yahoo.com) <<mailto:rad4505@yahoo.com>>

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: ELIXIR ENTERPRISES CORPORATION

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: Richard A. Dent (Seal)  
Title:

ATTEST: CITY OF ANNAPOLIS

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

By: \_\_\_\_\_  
Michael J. Pantelides, Mayor (Seal)

APPROVED FOR FINANCIAL  
SUFFICIENCY:

REVIEWED AND APPROVED BY:

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

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

APPROVED FOR FORM AND LEGAL SUFFICIENCY

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