



City of Annapolis

Signature Copy

Ordinance: O-34-20

160 Duke Of Gloucester
Street
Annapolis, MD 21401

File Number: O-34-20

Chesapeake Region Accessible Boating, Inc. Lease Agreement - For the purpose of approving the lease for certain City-owned property located at the Port Williams Marina, 7040 Bembe Beach Road, Annapolis, MD 21403, between Chesapeake Region Accessible Boating, Inc. and the City of Annapolis; and matters generally relating to said lease.

CITY COUNCIL OF THE
City of Annapolis

Ordinance 34-20

Introduced by: Mayor Buckley, Alderman Savidge

**Co-sponsored by: Alderwoman Tierney, Alderwoman Pindell Charles, and Alderwoman
Finlayson**

AN ORDINANCE concerning

Chesapeake Region Accessible Boating, Inc. Lease Agreement

FOR the purpose of approving the lease for certain City-owned property located at the Port Williams Marina, 7040 Bembe Beach Road, Annapolis, MD 21403, between Chesapeake Region Accessible Boating, Inc. and the City of Annapolis; and matters generally relating to said lease.

WHEREAS, the City of Annapolis is the fee simple owner of property previously known as Port Williams Marina, 7040 Bembe Beach Road, Annapolis, MD 21403 and all improvements located thereon including the two-story home, the commercial building, sheds, marina, parking lot, bulkheads, docks, and all open space common areas, including all applicable water and riparian areas, lying and being in the City of Annapolis, Maryland as further shown on Attachment A (collectively, the "Premises") attached hereto and incorporated herein; and

WHEREAS, Chesapeake Region Accessible Boating, Inc., a Maryland corporation, desires to lease the entire aforementioned Premises from the City to provide boating instruction and education programs, conduct events to support its operations at and improvements to the Premises; allow use by Third Party Licensees that directly benefit the Annapolis Adaptive Boating Center, and provide other services, as further described in the Lease Agreement attached hereto and incorporated herein; and

WHEREAS, Chesapeake Region Accessible Boating, Inc.'s principal use of the Premises is to operate the Annapolis Adaptive Boating Center for boating/sailing instruction for people with disabilities consistent with the terms of the Lease Agreement; and

WHEREAS, the City is willing to lease the space to Chesapeake Region Accessible Boating, Inc. for the purposes described and in accordance with the terms and conditions set forth in the Lease Agreement; and

WHEREAS, Article III, Section 8 of the Charter of the City of Annapolis requires the passage of an ordinance to authorize the Lease Agreement.

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 Chesapeake Region Accessible Boating, Inc. 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 II: 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

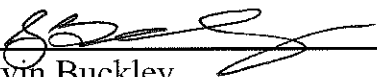
~~Strikethrough~~ indicates matter stricken from existing law.

Underlining indicates matter added to existing law.

ADOPTED this 12th day of October, 2020.

Aye: 9 Mayor Buckley, Alderwoman Tierney, Alderman Paone, Alderwoman Pindell Charles, Alderwoman Finlayson, Alderman Schandelmeier, Alderman Gay, Savidge and Alderman Arnett

THE ANNAPOLIS
CITY COUNCIL


Gavin Buckley

Date 10/26/2020

ATTEST


Regina C. Watkins-Eldridge, MMC

Date 10/26/2020

CITY OF ANNAPOLIS LEASE AGREEMENT

THIS LEASE AGREEMENT is made as of this _____ day of _____, 20____ by and between **CHESAPEAKE REGION ACCESSIBLE BOATING, INC. (dba CRAB)**, a Maryland corporation (the "Lessee") and the **CITY OF ANNAPOLIS**, a municipal corporation of the State of Maryland (the "Lessor").

WHEREAS, the Lessor owns the property previously known as Port Williams Marina, 7040 Bembe Beach Road, Annapolis, MD 21403, as more accurately described in a deed recorded at Liber _____, folio _____ among the Land Records of Anne Arundel County, and all improvements located thereon including the two-story home, the commercial building, sheds, marina, parking lot, bulkheads, docks, and all open space common areas, including all applicable water and riparian areas, lying and being in the City of Annapolis, Maryland as further shown on Attachment A (collectively, the "Premises"); and

WHEREAS, the Lessee desires to lease the entire aforementioned Premises from the Lessor to provide boating instruction and education programs, conduct events by the Lessee to support its operations at and improvements to the Premises; allow use by Third Parties Licensees, as defined herein; that directly benefit the Annapolis Adaptive Boating Center (AABC), and provide other services, as further described in this Lease Agreement; and

WHEREAS, the parties wish to enter into this Lease Agreement setting forth their respective rights and obligations.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereby do mutually agree as follows:

1. Leased Premises.

(a) The Lessor does hereby lease the Premises to the Lessee

(b) The Lessee shall have sole access to the Premises for use by all people with disabilities; and, volunteers and staff working for the Lessee consistent with this Lease Agreement. The general public will be provided access to the Premises during non-peak boating periods (generally November through March) to learn about the Adaptive Boating Center, as further described herein, and the Lessee's mission and programs provided by the Lessee. Due to space limitations, general public access may be by advance reservation and no other services shall be required by the Lessee during access by members of the general public. The Lessee may grant temporary licenses to third parties for the use of any or all of the facilities on the Premises in accordance with the purposes of this Lease Agreement. Pursuant to that authority, the Lessee shall have the right to impose regulations governing the use of the facilities on the Premises by its invitees and or any third person licensees, which may include a requirement for payment of reasonable security deposits, insurance and specifications governing food and beverage vendors servicing that invitee or licensee.

(c) The Lessee may require licenses, permits, and/or reservation deposits, and other fees as a condition for third parties licensees (each a "Third Parties Licensee") to reserve specific facilities at the Premises, such as pavilions and other designated picnic or event areas. The Lessee shall set and manage all such Third Parties Licensee permits, deposits and fees and shall

have the right to retain all such funds that it collects. Any fees collected by the Lessee under this Lease Agreement shall be used to defray the Lessee's operating or capital improvement costs for the Premises.

2. Term; Option Term.

(a) The Lessor leases to the Lessee and the Lessee hereby leases from the Lessor the Premises for a term commencing on the date of City Council approval and terminating on June 30, 2040 (the "Term"), unless terminated earlier in accordance with the terms of this Lease Agreement.

(b) Expressly subject to the Lessee fulfilling the requirements of Paragraph 4, the Lessor grants to the Lessee the option to renew this Lease at its expiration for two (2) additional ten (10) year terms (the "Option Term"). Such Option Term is exercisable by Lessee by providing written notice to Lessor no earlier than two hundred seventy (270) calendar days, and no later than one hundred eighty (180) calendar days prior to the end of the Term and provided the Lessee is not then in default in any manner at the time of exercise of this Option Term and further has complied with all the requirements of Paragraph 4 (the "Option Requirements").

(c) This Option Term shall be on the same, or substantially similar, terms and conditions as the original Term. In the event either party requests or requires any material change to the terms and conditions set forth herein, the approval of the Annapolis City Council shall be required.

(d) If the Lessee fails to comply with all of the Option Requirements to the reasonable satisfaction of the Lessor, then the Lessor shall have the right to terminate this Lease Agreement on June 30, 2040.

3. Use of Premises.

(a) The Lessee shall use and occupy the Premises for the sole purpose of operating the Annapolis Adaptive Boating Center for boating/sailing instruction for people with disabilities consistent with this Lease Agreement. Fundraising activities on the Premises shall be used to defray the Lessee's operating or capital improvement costs for the Premises.

(b) Any future sublease agreements must be made available to the Lessor and DNR to review and approve to ensure consistency with program requirements.

(c) The Lessee shall not use or occupy or permit the Premises, or any part thereof, to be used, nor do or permit anything to be done in or on the Premises in a manner which would in any way (1) violate any of the terms of this Lease Agreement; (2) make it difficult for either the Lessor or the Lessee to obtain the appropriate insurance required by this Lease Agreement at standard rates; (3) cause or create a public or private nuisance in or on the Premises; or (4) tend to impair or interfere with the character, reputation or appearance of the Premises.

(d) The Lessee is required to have a sign designating it as the "CRAB Adaptive Boating Center," in addition to the language required by current Maryland Department of Natural Resources ("DNR") Program Open Space ("POS") regulations recognizing the State of Maryland, County of Anne Arundel and City of Annapolis as POS funding organizations for the ABC. The Lessee shall maintain any sign and shall repair and replace the same when necessary to keep in good condition and repair at all times. The Lessor reserves the right to request the Lessee to

remove any sign on the Premises at any time, provided the Lessor substantiates a reasonable justification for that request that is consistent with the provisions of this Lease Agreement.

(e) The Lessee acknowledges and understands that the Premises is subject to State of Maryland laws, regulations and policies related to POS funding, as further specified in the Natural Resources Article of the Maryland Annotated Code, and the Lessee shall comply with all POS legal and Policy requirements in its use of the Premises. The Lessor shall have the right to terminate this Lease Agreement in accordance with Paragraph 18 if the Lessee fails to comply with this subparagraph.

4. Waiver of Rent; Annual Reports; Financial Statements

(a) In lieu of monetary rental payments, and expressly in addition to the requirements specified in Paragraph 5, the Lessee shall maintain the Premises in accordance with Paragraph 7 of this Lease Agreement.

(b) No later than thirty (30) calendar days prior to the end of each Lessor fiscal year (July 1 – June 30), the Lessee shall provide to the Lessor's Mayor, City Council, City Manager, and Director of the Recreation and Parks Department, c/o the City Attorney, 160 Duke of Gloucester Street, Annapolis, MD 21401, a written annual report (each an "Annual Report" and collectively the "Annual Reports"), as described herein, and the Lessor's most recent annual financial statements. Each Annual Report shall describe any changes or improvements to the Premises; describe any other program accomplishments related to the Premises; and address any Lessor concerns related to this Lease Agreement. The Lessee's authorized agent or representative shall sign each Annual Report. If requested by the Lessor, the Lessee shall present such Annual Reports at a meeting or work session of the Lessor's City Council, along with audited annual financial statements for the Lessee.

5. Improvements to the Premises and Grants.

(a) The Lessee shall, at its sole cost and expense, perform all improvements to the Premises, including all structure renovations and grounds revitalization, which are reasonably necessary for the operation of the Lessee's boating recreation activities and education programs for disabled persons at the Premises, obtain all appropriate licenses and permits required by law, and comply with all zoning requirements. Except for the Initial Improvements, as defined below, the Lessee shall not expand, modify or make material improvements that alter the charter or use of the Premises as provided in this Lease Agreement and that require permitting and/or involve the critical area or other governmental regulations without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. Any material improvements to the Premises undertaken by the Lessee shall be performed by contractors licensed, bonded and insured in the State of Maryland. The Lessee shall obtain all necessary permits to perform any improvements to the Premises. The Lessee agrees that all such improvements shall become the property of the Lessor immediately upon completion and/or installation of such improvements on the Premises, and, further, that the Lessee shall be entitled to no reimbursement or repayment for any such improvements.

(b) At a time to be determined by the Lessee and at its sole cost and expense, the Lessee shall undertake the following repairs and improvements to make the Premises suitable for the Lessee's use in accordance with this Lease Agreement: (1) removal of the existing docks and existing commercial building; (2) installation of new floating ADA docks and an ADA fully

accessible building farther from the shoreline; (3) removal and replacement of the currently existing single family residence to create space for a pavilion for all patrons (collectively, the "Initial Improvements"). The commercial building on the property does not meet ADA code and is unsuitable for use by people with disabilities. The building will be removed and a new building constructed that will be fully ADA accessible. An open air pavilion will be constructed where the single family home is located. The pavilion will provide protection from the weather for people waiting to go sailing/boating.

The Lessee shall not be required to obtain the Lessor's prior written consent in accordance with Paragraph 5(a) above for the Initial Improvements; provided the Lessee shall obtain all necessary permits to perform the Initial Improvements to the Premises. The Lessee further agrees that all such Initial Improvements shall become the property of the Lessor immediately upon completion and/or installation of such Initial Improvements on the Premises, and, further, that the Lessee shall be entitled to no reimbursement or repayment for any such Initial Improvements.

(c) The Lessee and the Lessor shall cooperate and support each other in the application for and in the expenditure of any applicable federal, state and local grant monies intended for the purpose of improving, maintaining or operating the Premises or intended for activities at the Premises. The Lessee shall obtain the Lessor's prior written approval before agreeing to or accepting any federal, state or local grants or grant funding for capital improvements to the Premises. If the Lessee should mistakenly or willfully obligate the Lessor to any responsibilities or liabilities by applying to, agreeing to or accepting any grants without the Lessor's approval, it shall be considered a default of this Lease Agreement and the Lessee shall take full responsibility for any such responsibilities and liabilities, including any associated costs and expenses.

(d) As part of its right of entry pursuant to Paragraph 27, the Lessor shall be entitled at its sole expense to install, maintain and access storm water improvements on the Premises that do not interfere with the Lessee's use or operations of the Premises, after not less than forty-eight (48) hours prior notice to the Lessee (except in the case of an emergency where no such notice is required). Any total maximum daily loads ("TMDL") or other storm water credits related to any storm water improvements on the Premises shall be credited to the Lessor, and neither the Lessee nor any other third party shall have any right to any such credits.

6. Impairment of Lessor's Title; Assignment/Subletting.

(a) Neither the Premises nor any portion of the Premises, nor this Lease Agreement or any interest in it may be hypothecated or mortgaged by the Lessor or the Lessee, and any attempted hypothecation or mortgaging of this Lease Agreement shall be of no force or effect and shall confer no rights upon any mortgagee or pledgee.

(b) Except as provided in Paragraph 3(b) above, the Lessee 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 Lessor in the Premises. The Lessee shall not permit any part of the Premises to be used by any person or persons or by the public at any time or times during the Term or Option Term of this Lease Agreement in such manner as might tend to impair the Lessor's title to or interest in the Premises 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.

(c) The Lessee shall not permit any liens for labor or materials to attach to the Premises as a result of any improvements made or constructed upon the Premises by the Lessee, and if such liens do attach, the Lessee shall immediately cause such liens to be discharged of record or bonded for the full amount of the lien. Failure of the Lessee to discharge or bond for the full amount of any lien within thirty (30) calendar days of receipt of notice thereof shall be cause for the Lessor, at its option, to immediately terminate this Lease Agreement pursuant to Paragraph 18 and to sue the Lessee for direct costs incurred in the discharge of such lien damages.

(d) The Lessee shall not assign this Lease Agreement or any part thereof without the prior written consent of the Lessor, which the Lessor may consent to or refuse to consent to in its sole discretion and as it deems appropriate. The prohibition stated herein shall not apply to a change of name or legal reorganization by the Lessee, provided the Lessee provides written notice of such change or reorganization to the Lessor in a timely manner.

(e) The Lessee shall not sublet any portion of the Premises without providing the Lessor and the Department of Natural Resources (DNR) with a copy of any proposed sublease agreement for the Lessor's and DNR's written approval not later than thirty (30) calendar days prior to the effective date of any such sublease agreement, and ensuring that any such sublet or sublease complies with all zoning requirements. Approval of any proposed sublease agreement will not be unreasonably withheld by the Lessor, who will complete their review no later than 30 days upon receipt of the request. A failure by the Lessee to provide the Lessor with such notice and sublease agreement, obtain such approval as provided herein, and comply with all zoning requirements shall constitute a default of this Lease Agreement.

7. Maintenance and Management of the Premises.

(a) The Lessee shall be the management entity for all aspects of use, operations and management of the Premises as an Adaptive Boating Center, and the Lessee shall operate the Premises to the best of its ability, using both paid staff, contractors, and volunteers.

(b) The Lessee shall be solely responsible for the maintenance of the Premises as it pertains to the buildings, sheds, marina, parking lot, bulkheads, docks, and all open space common areas, including all applicable water and riparian areas, and shall, at the Lessee's sole cost and expense, keep in good repair all improvements located thereon, including the interior and exterior of any structures on the Premises. The Lessee, at its sole cost and expense, shall provide routine structure cleaning and repairs, utility maintenance and repairs, all janitorial work, HVAC, plumbing, electric and related items. The Lessee shall be solely responsible for any annual costs of maintenance and service contracts for any structure/building systems, to include security, fire alarm, HVAC equipment, and lighting systems. In addition, the Lessee shall secure and light such portions of Premises as may be appropriate and maintain the Premises in a clean, safe and secure manner.

(c) The Lessee further agrees (1) to cut and maintain the grass areas located on the grounds of the Premises; (2) to remove litter and to empty trash cans in the outdoor areas on the grounds of the Premises; and (3) to remove snow from the driveways and parking lots on the Premises.

8. Telecommunications Build-Out.

The Lessee shall assume all costs and expenses related to any telecommunications build-

out of the Premises, including but not limited to, telephone, telefax, computer, cable installation and/or satellite, it being understood by the parties that the Lessor shall have no obligation or duty with regard to same.

9. Utility Expenses.

The Lessee shall have all utilities (gas, electric, telecommunications, heating, plumbing, water, etc.) at the Premises placed in an account bearing only the Lessee's name, and the Lessee shall be solely responsible for the payment of all expenses related to all such utilities, it being understood by the parties that the Lessor shall have no obligation or duty with regard to same.

10. Naming Rights.

In order to defray operating costs of the Premises, the Lessee may create naming rights for structures, docks/piers, pavilions, and/or picnic areas within the interior boundaries of the Premises after obtaining the Lessor's prior written permission for each naming right. The Lessor shall respond to each request for a naming right within twenty (20) calendar days of request. The Lessee shall not take any action that would change the name or identity of the Premises itself other than to refer to the Premises as the CRAB Adaptive Boating Center for the Term of this Lease Agreement.

11. Security.

(a) The Lessee hereby assumes and shall be solely responsible for all risks associated with the security of any structures and/or personal property located on the Premises, and with the Lessee's use of the Premises.

(b) The Lessee shall have the right to restrict public access to the Premises at all times other than the public access days designated by the Lessee.

12. Damage to the Premises - Force Majeure.

In case of any substantial loss of or damage to the Premises as the result of fire, storm or other casualty or force majeure event, the Lessee shall repair, restore and/or replace any of the Premises.

13. Assumption of Risk; Lessee Indemnification.

(a) The Premises shall be leased in an "as is" condition, with all faults, and the Lessor makes no representation or warranty with regard to habitability or condition of the Premises or with regard to its suitability for any particular use. The Lessee has been informed that the Premises are subject to flooding and that such flooding may disrupt the Lessee's use and occupancy of the Premises and/or cause a risk of injury to persons and/or damage to personal property located on the Premises. The Lessee assumes the risk of any and all such disruptions, injuries and/or damage, and hereby waives any and all claims against the Lessor and, in their capacity as such, the officers, agents and employees thereof, from and against any and all claims, suits, actions, liability, judgments or damages for actual or alleged injury to persons, to the Premises or to other property (including loss of use of the Premises or other property whether or not the Premises or such property is physically damaged or destroyed) in any way arising out of or through, or alleged to arise out of or through, flooding of the Premises.

(b) The Lessee shall indemnify, defend and hold the Lessor, its elected officials, appointees, directors, employees, agents, and representatives harmless from and against all liability for injuries to persons, including death, and damage to the Premises arising from acts or omissions of the Lessee, its officers, agents, employees, contractors, volunteers, or licensees resulting in connection with this Lease Agreement.

(c) The Lessee's indemnifications in Paragraph 13(b) shall include reasonable attorney fees and costs incurred by the Lessor in defending any claims, complaints, causes of action, lawsuits, or other such actions.

(d) The Lessor, 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.

(e) Lessee indemnification does not limit any immunity which the Lessor may be entitled to assert and includes all costs and expenses, including attorney's fees, whether or not related to administrative or judicial proceedings.

(f) The Lessee shall reimburse the Lessor, within sixty (60) calendar days after invoicing for such reimbursement, for any damage to any improvements made in accordance with Paragraph 5 or to any Lessor-owned utilities located on the Premises caused by the negligence or willful misconduct of the Lessee, its officers, agents, employees, contractors, patrons, volunteers, guests or invitees.

14. Environmental Matters; Environmental Indemnification.

(a) For purposes of this Paragraph 14 and the Lease Agreement, the following definitions shall apply:

(1) "Environmental Legal Requirements" shall mean any applicable law relating to public health, safety or the environment, including, without limitation, relating to releases, discharges or emissions to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use and handling of polychlorinated biphenyls ("PCB's"), asbestos or asbestos containing products, to the disposal, treatment, storage or management of Hazardous Substances, to the handling, transportation, discharge or release of gaseous or liquid substance, and any regulation or final order or directive issued pursuant to such statute or ordinance, in each case applicable to the Premises, including without limitation the following: Titles 7 and 9 of the Environment Article of the Maryland Annotated Code, Title 26 of the Code of Maryland Regulations, the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act, the Toxic Substances Control Act, the Comprehensive Environmental Response Compensation and Liability Act, as amended by the Solid and Hazardous Waste Amendments of 1984, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Solid Waste Disposal Act, all as may be amended, and any federal, state or local statutes addressing similar matters.

(2) "Hazardous Substances" shall mean any substances, chemicals, materials or elements that are defined as "hazardous" or "toxic" and regulated by any Environmental Legal Requirements, and shall also include, without limitation, any substance, chemical, material, or element (i) defined as a "hazardous substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42USC§§ 9601, et seq.), as amended by the Superfund Amendment and Reauthorization Act of 1986, and as further amended from time to

time and regulations promulgated thereunder; (ii) defined as a "regulated substance" within the meaning of Subtitle I of the Resource Conservation and Recovery Act (42 USC §6991-6991(i)), as amended from time to time and regulations promulgated thereunder; (iii) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 USC §1321) or listed pursuant to Section 307 of the Clean Water Act (33 USC § 1317); (iv) defined as "hazardous," "toxic," or otherwise regulated under any Environmental Legal Requirements adopted by the state in which the Premises is located or its agencies or political subdivisions; (v) which is petroleum, petroleum products or derivatives or constituents thereof; (vi) which is asbestos or asbestos-containing materials; (vii) the presence of which requires notification, investigation or remediation under any Environmental Legal Requirements; (viii) that is urea formaldehyde foam insulation or urea formaldehyde foam insulation-containing materials; (ix) that are polychlorinated biphenyls or polychlorinated biphenyl-containing materials; (x) that are radon or radon-containing or producing materials; or (xiii) that require special handling in its collection, storage, treatment or disposal by any Environmental Legal Requirements.

(b) The Lessee shall not bring onto the Premises any Hazardous Substances, other than those substances traditionally required to power, clean and maintain boats ("Boat Hazardous Substances"), as further described in Attachment B.

(c) The Lessee shall be liable for the consequences of, and responsible for proper removal and lawful disposal of, at its sole expense, any Hazardous Substances, including, but not limited to the Boat Hazardous Substances, that it or its agents, employees, contractors, patrons, guests or representatives bring, brought or allow to be brought onto the Premises.

(d) The Lessee shall indemnify, defend and hold the Lessor, its elected officials, appointees, directors, employees, agents, and representatives harmless from and against all liability for injuries to persons, including death, and damage to the Premises arising from acts or omissions of the Lessee, its officers, agents, employees, contractors, patrons, volunteers, guests or invitees with respect to the existence of any Hazardous Substances, including, but not limited to the Boat Hazardous Substances, on the Premises after the commencement of this Lease Agreement and/or any Environmental Legal Requirements for the Premises arising out of actions or inactions of the Lessee. The Lessee hereby acknowledges and agrees that such indemnity shall include any losses, costs, penalties, fines, damages, expenses, liability claims, suits, and/or demands of the United States and/or State of Maryland governments, including, but not limited to, the U.S. Environmental Protection Agency, the Maryland Department of the Environment and the Maryland Department of Natural Resources incurred by or made against the Lessor only if resulting from any negligent act or omission by the Lessee related to the existence of any Hazardous Substances on the Premises after the commencement of this Lease Agreement and/or any Environmental Legal Requirements for the Premises arising out of actions or inactions of the Lessee. Notwithstanding the foregoing, the Lessee shall not have any liability for the existence of any Hazardous Substances that are or were present at the Premises prior to the commencement date of this Lease Agreement.

15. Insurance.

(a) As a part of the indemnification provided by the preceding Paragraph, but without limiting the foregoing, the Lessee shall file with the Lessor concurrent with the execution of this Lease Agreement, and at all times thereafter maintain in full force and effect at the Lessee's sole cost and expense, an acceptable policy or policies of liability insurance, including comprehensive general liability insurance. The policy or policies shall name as primary or additional insured the

Lessor, and in their capacity as such, the officers, agents and employees thereof, and shall specify that the insured shall have no right of subrogation. Said policy(s) of insurance shall be in a minimum amount sufficient to cover complete replacement value of the Premises, the Initial Improvements, and all other improvements done pursuant to Paragraph 5, as well as in the minimum single limit amount of one million dollars (\$1,000,000.00) per person for any one claim and an aggregate limitation of two million dollars (\$2,000,000.00) for any number of claims arising from any one (1) incident. The insurance policy(s) shall insure against the types of liabilities covered by the indemnification and hold harmless provisions above.

(b) The Lessor shall obtain flood insurance in a minimum amount sufficient to cover complete replacement value of the Premises, the Initial Improvements, and all other improvements done pursuant to Paragraph 5.

(c) The insurer or insurers of the policy or policies referred to in this Paragraph 15 shall be authorized to write the required insurance, approved by the Insurance Commissioner of the State of Maryland.

(d) The certificate of insurance for such policy(s) shall be maintained by the Lessee in full force and effect during the entire Term and Option Term of this Lease Agreement and any renewal thereof. Each policy of insurance shall contain a statement on its face that the insurer will not cancel the policy or fail to renew the policy, whether for nonpayment of premium, or otherwise, and whether at the request of the Lessee or for any other reason, except after thirty (30) calendar days advance written notice mailed by the insurer or the Lessee to the Lessor and that such notice shall be transmitted postage prepaid, with return receipt requested.

(e) In addition to the foregoing, the Lessee shall insure against any damage that may occur to improvements or personal property located on the Premises by the Lessee or by any other person at the Lessee's request during the Lessee's occupancy or use of the Premises. The Lessee hereby assumes the risk of any and all damages, loss, theft or casualty of every nature, type and description to any such improvements or personal property on the Premises.

16. Permits and Compliance with Laws.

(a) The Lessee shall be solely responsible for compliance with all applicable laws, including compliance with all zoning requirements, and the acquisition of any and all permits and any other items necessary for the use of the Premises other than for the rights granted to the Lessee under this Lease Agreement. The Lessor makes no warranties or assurances regarding the availability of necessary permits. The Lessee acknowledges that if the Premises' location is in the floodplain, additional permitting requirements may apply to the Lessee's use and occupancy of the Premises.

(b) The Lessee, at its sole cost and expense, shall comply with and do all things required by any notice served upon it or upon the Lessor in relation to the Premises or any part thereof from any governmental department or agency if the same shall be caused by the Lessee's use of the Premises, including compliance with all deadlines specified in such notice. In the event of an appeal by the Lessee, such notice shall become effective upon a final order of the court. The Lessee shall pay all costs, expenses, claims, fines, penalties, and damages that may in any manner arise out of the failure of the Lessee to comply after the issuance of such order.

(c) The Lessee shall provide the Lessor with a copy of all notices received pursuant to

Paragraph 16(b) within ten (10) calendar days of receipt, unless such violation relates to public safety or environmental matters, in which case, the Lessee shall immediately notify the Lessor. The Lessor may order a temporary suspension of the Lessor's business and other operations at the Premises pending compliance if otherwise authorized by law or if such violation relates to public safety or environmental matters.

17. Removal of Personal Property.

(a) At the expiration or earlier termination of this Lease Agreement, the Lessee shall promptly remove, at its sole cost and expense, any and all personal property placed on the Premises by the Lessee or by other persons at the request or with the permission of the Lessee. Any such personal property not removed by the Lessee at the expiration of this Lease Agreement, and the Lessee's continued failure to remove the same within thirty (30) calendar days after receipt of notice from the Lessor, shall be deemed abandoned and, at the election of the Lessor, shall become the property of the Lessor without payment of any kind to the Lessee, without increasing the Lessor's liability to the Lessee, and for any disposition of it as the Lessor decides to make. Any improvements made by the Lessee pursuant to this Lease Agreement shall remain on the Premises as property of the Lessor.

(b) If the Premises are not surrendered when required, the Lessee shall indemnify, defend and hold the Lessor, its elected officials, appointees, directors, employees, agents, and representatives harmless against loss or liability resulting from the delay by the Lessee 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 Lessor after the termination or expiration of this Lease Agreement shall be construed to be a tenancy from month-to-month upon the same terms and conditions as provided in this Lease Agreement, to the extent applicable.

18. Default.

(a) The occurrence of any one (1) of the following events shall constitute a "Default" under the terms of this Lease Agreement, subject to the Lessee's right to cure as set forth herein:

(1) Failure by the Lessee to make any payment required to be made by the Lessee under this Lease Agreement and the Lessee fails to remedy such Default within ten (10) business days after any such payment is due and payable.

(2) Failure to meet the requirements of Paragraph 4(a) and/or 4(b).

(3) Failure by the Lessee to observe or perform any material covenants, conditions or provisions of this Lease Agreement.

(4) Failure to provide insurance as required in Paragraph 15.

(5) Failure to comply with any and all State of Maryland laws, regulations, and policies related to Program Open Space funding used in connection with the Premises.

(6) The Lessee's loss of status as a 501(c)(3) organization.

(7) Any general assignment or general arrangement for the benefit of creditors, the filing by or against the Lessee of a petition to have the Lessee 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 Lessee, the same is dismissed within sixty (60) calendar days), the appointment of a trustee or receiver to take possession of substantially all of the Lessee's property located in the Premises or the Lessee's interest in this Lease Agreement 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 Lessee's interest in this Lease Agreement, where such seizure is not discharged or bonded within ten (10) business days.

(8) Vacating or abandonment of the Premises by the Lessee.

(b) Upon the occurrence of a Default, the Lessor shall, subject to and conditioned upon the Lessee's right to cure as set forth in Paragraph 18(d) below, proceed to terminate this Lease Agreement and the Lessee's right to possession of the Premises, and after compliance with the applicable legal process, re-enter and take possession of the Premises and remove the Lessee, any occupant and any property therefrom without being guilty of trespass or being liable to any suit, action or prosecution therefore, which liability the Lessee hereby expressly waives, and without relinquishing any rights of the Lessor against the Lessee. Notwithstanding such re-entry and termination of this Lease Agreement, the Lessee shall remain liable to the Lessor for any payments or damages due or sustained prior thereto.

(c) No act or omission by the Lessor shall be deemed to be an acceptance of a surrender of the Premises or a termination of the Lessee's liabilities under this Lease Agreement, unless the Lessor shall execute a written release of the Lessee.

(d) The Lessor shall afford the Lessee not less than thirty (30) calendar days to cure any Default of this Lease Agreement before declaring a Default and terminating this Lease Agreement.

19. Remedies Upon Default.

(a) In the event of the Lessee's Default under Paragraph 18 of this Lease Agreement, the Lessee's sole liabilities to the Lessor shall be limited to the following that were incurred or caused prior to such Default:

(1) Those liabilities specified in Paragraph 18 of this Lease Agreement;

(2) Indemnification pursuant to Paragraph 13, 14(d) and/or Paragraph 17(b) of this Lease Agreement;

(3) Remittance to the Lessor of any insurance proceeds for any claims incurred under the policy(s) maintained pursuant to Paragraph 15 of this Lease Agreement;

(4) Damages pursuant to Paragraph 6(c), Paragraph 16(b) and/or Paragraph 17(b) of this Lease Agreement;

(5) Reimbursement and/or payment for costs incurred pursuant to Paragraph 13(f) and/or Paragraph 27(a) of this Lease Agreement; and

(6) The Lessor's uncontested and undivided rights to any and all improvements, rehabilitations and/or other maintenance undertaken, begun and/or completed by the Lessee pursuant to Paragraphs 5 and 7 of this Lease Agreement, and all personal property abandoned

pursuant to Paragraph 17(a) of this Lease Agreement, without reimbursement or repayment of any kind or nature to the Lessee.

(b) The remedies set forth in this Paragraph 19 are the extent of the Lessee's liabilities and damages in the event of Default if any claims are made under this Lease Agreement, including alleged misrepresentation or breach of contract regardless of the form in which any claim, legal or equitable action may be initiated and shall constitute liquidated damages and are, therefore, the Lessor's exclusive remedies.

20. Taxes and Assessments; Fees.

(a) The Lessee shall pay all impositions including all state, county and local taxes (including real estate ad valorem, sales, use, and occupancy taxes), and assessments of any kind and nature whatsoever for which the Lessee may be responsible under law, including all interest and penalties on them, which shall or may accrue or be incurred during the Term or Option Term of this Lease Agreement. The Lessee shall pay all such taxes and assessments before any fine, penalty, interest, or cost may be added for nonpayment, and shall furnish to the Lessor, 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 Lessee shall be liable only for payment of those installments falling due and payable during the Term or Option Term, with appropriate pro-ratio 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 Lessor, or any municipal, state or federal capital levy, estate, succession, inheritance or transfer taxes of the Lessor, or any franchise taxes imposed on the Lessor, or any income, profits or revenues tax, assessment or charge imposed on any rent received as such by the Lessor under this Lease Agreement.

(c) The Lessee shall pay all fees assessed for the Premises in accordance with Chapter 17.10 of the City Code, including all interest and penalties on them, which shall or may accrue or be incurred during the Term or Option Term of this Lease Agreement.

21. Reservation of Governmental Authority.

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

22. Benefit and Burden.

The provisions of this Lease Agreement shall be binding upon and inure to the benefit of the parties hereto and each of their respective representatives, successors and assigns.

23. Governing Law.

(a) This Lease Agreement shall be governed and construed in accordance with the laws of the State of Maryland, and the venue for all actions initiated pursuant to this Lease Agreement shall be exclusively the Courts of Anne Arundel County, Maryland.

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

24. Captions.

The captions at the beginning of each Paragraph of this Lease Agreement are asserted only as a matter of convenience or reference purposes.

25. Entire Agreement.

(a) This Lease Agreement contains the entire agreement between the parties hereto and any agreement (written or oral) hereafter or heretofore made shall not operate to change, modify, terminate or discharge this Lease Agreement, in whole or in part, unless such agreement is reduced to writing and signed by the authorized representatives of each of the parties hereto.

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

26. Severability.

The provisions of this Lease Agreement are severable and if any provision, clause, sentence, section or part hereof is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such paragraph shall be stricken and the balance shall remain intact, provided the Lessee has the right to remain in possession of the Premises as set forth herein.

27. Right of Entry.

(a) The Lessor and its employees, representatives, agents, and contractors, including any builder or contractor employed by the Lessor, shall have the absolute unconditional right at any and all reasonable times, after not less than forty-eight (48) hours prior written notice to the Lessee (except in the case of an emergency where no such notice is required), to enter the Premises for any of the following purposes: (1) to inspect the Premises; (2) to access any Lessor utilities, infrastructure, stormwater management devices, pipes, and all related appurtenances located on the Premises for inspection, monitoring, maintenance, construction and/or repair purposes; (3) in the case of a safety hazard or other emergency, to make such repairs and/or changes in the Premises as the Lessor may deem necessary and that the Lessee has failed to immediately initiate, the cost of which the Lessee shall reimburse within thirty (30) calendar days of the Lessor's invoice; or (4) to enforce and carry out any provision of this Lease Agreement.

(b) The Lessor shall use reasonable efforts to minimize interference to the Lessee's business or use of the Premises when making inspections or when otherwise on the Premises, but the Lessor shall not be required to perform the inspections or otherwise enter the Premises at any time other than during normal working hours.

28. Non-Discrimination.

(a) The Lessee 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 require the Lessee to render services pursuant to this Lease Agreement to categories of individuals who do not meet the description in Paragraph 1(b) for people with specific needs.

29. Representations and Warranties.

The Lessee represents and warrants to the Lessor that:

(a) The Lessee 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 Agreement.

(b) The Lessee is authorized to execute, deliver and perform this Lease Agreement.

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

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

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

(f) There exists no actual or potential conflict of interest between its performance under this Lease Agreement 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 or Option Term of this Lease Agreement or any extension thereof, the Lessee shall immediately advise the Lessor in writing thereof.

30. Independent Contractor Status.

Nothing contained in this Lease Agreement shall be construed to constitute the Lessee as an agent, representative or employee of the Lessor or to create any relationship between the parties other than landlord and tenant.

31. Recitals.

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

32. Survival.

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

33. Counterparts.

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

34. Notices; Approvals.

Any and all notices required to be sent under this Lease Agreement, including any requests by the Lessee for the Lessor's approval, consent and/or permission, shall be sent as follows:

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

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

Lessee: Chesapeake Region Accessible Boating, Inc.
President
P.O. Box 6564
Annapolis, Maryland 21401

In the case of a notice requesting the Lessor's approval, consent, and/or permission, the Lessor's City Manager shall have the authority to respond to the Lessee on the Lessor's behalf. The Lessor's City Manager shall respond to the Lessee within thirty (30) calendar days of receipt of the request. If the Lessee should need a quicker response from the Lessor, it may request that in its notice along with reasonable justification for such expedited review. The Lessor's City Manager reserves the right to request any additional information or documentation from the Lessee as may be needed for the Lessor to review and respond.

35. Authorization: This Lease Agreement is authorized by Ordinance O-34-20.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement the day and year first above written:

WITNESS: CHESAPEAKE REGION ACCESSIBLE BOATING, INC.

_____ By: _____
Brad LaTour (Seal)
President

ATTEST: CITY OF ANNAPOLIS

_____ By: _____
Regina C. Watkins-Eldridge, MMC, (Seal)
City Clerk Mayor

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

OFFICE OF THE CITY ATTORNEY

**ATTACHMENT A
THE PREMISES**

**ATTACHMENT B
BOAT HAZARDOUS SUBSTANCES**



Port Williams Marina
Bembe Beach Rd
Orthophotography
2018

LEGEND

● Hydrants

This map was created by the City of Annapolis, Department of Public Works, Bureau of Engineering & Construction from the best available data at the time of its creation. This data was compiled and controlled by the James W. Sewall Company by photogrammetric methods from aerial photographs dated March 1, 2002.



