

1 **..Title**

2 **Lease of City Property to Chesapeake Marine Tours, Inc.** – For the purpose of authorizing a
3 lease of certain municipal property located in the City Dock in Annapolis, Maryland to
4 Chesapeake Marine Tours, Inc. for certain periods of time from FY2023 to 2027.

5 **..Body**

6
7 **CITY COUNCIL OF THE**
8 **City of Annapolis**

9
10 **Ordinance No. O-14-17**

11
12 **Introduced by: Mayor Pantelides and Alderman Budge**

13
14 **Referred to**
15 **Economic Matters Committee**
16 **Environmental Matters Committee**
17 **Finance Committee**

18
19 **AN ORDINANCE** concerning

20
21 **Lease of City Property to Chesapeake Marine Tours, Inc.**

22
23 **FOR** the purpose of authorizing a lease of certain municipal property located in the City Dock
24 in Annapolis, Maryland to Chesapeake Marine Tours, Inc. for certain periods of time
25 from FY2023 to 2027.

26
27 **WHEREAS,** the City of Annapolis is the fee simple owner of the property known and
28 described as the City Dock in Annapolis, Maryland, which is improved by
29 docking space, boat slips and a boardwalk, and the City of Annapolis has space
30 therein to lease; and

31
32 **WHEREAS,** Chesapeake Marine Tours, Inc. desires to lease certain portions of the City Dock,
33 including docking space, two (2) boat slips and a portion of the boardwalk, and as
34 more particularly described in Paragraph 1 of the attached Lease; and

35
36 **WHEREAS,** Chesapeake Marine Tours, Inc. wishes to lease certain portions of the City dock
37 for the purpose of docking its vessels and carrying on its business of operating a
38 cruise and water taxi service on the Chesapeake Bay and its tributaries

39
40 **WHEREAS,** the Annapolis City Council believes that the proposed lease of City property
41 would benefit the City; and

42
43 **WHEREAS,** a lease setting forth details of the rental has been prepared and is considered
44 satisfactory; and
45

1 **WHEREAS**, Article III, Section 8 of the Charter of the City of Annapolis requires the passage
2 of an ordinance to authorize the lease.
3

4 **NOW THEREFORE**,

5
6 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY**
7 **COUNCIL** that the proposed lease between the City of Annapolis and Chesapeake Marine
8 Tours, Inc., for the rental of certain municipal property in the general City Dock area, as
9 described in the lease, a copy of which is attached hereto and made a part hereof, for portions of
10 FY2023 through 2027, more specifically described in the attached lease, and subject to the
11 option to expand or reduce the number of days of the tenancy as provided in the lease, is hereby
12 approved and the Mayor is hereby authorized to execute the lease on behalf of the City of
13 Annapolis.
14
15

16 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
17 **ANNAPOLIS CITY COUNCIL** that it is expressly found by the City Council that the property
18 to be leased will better serve the public need for which the property was acquired by stimulating
19 local interest in the boating industry, encouraging visitors and residents of the City to visit the
20 harbor and dock area, by generating tax revenues and rental income to the City and otherwise
21 providing economic benefits to the City.
22

23 **SECTION III: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
24 **ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its
25 passage.
26
27

28 **EXPLANATION**

29 CAPITAL LETTERS indicate matter added to existing law.

30 [brackets] indicate matter stricken from existing law.

31 Underlining indicates amendments
32

CITY OF ANNAPOLIS LEASE AGREEMENT

THIS LEASE AGREEMENT (“Lease”) is made this ____ day of _____, 2017, by and between the City of Annapolis, a municipal corporation of the State of Maryland (the “Lessor”), and Chesapeake Marine Tours, Inc., a Maryland corporation, its successors and assigns (collectively, the “Lessee”).

WHEREAS, the Lessor is the fee simple owner of the property known and described as the City Dock in Annapolis, Maryland (the “City Dock”), which is improved by docking space, boat slips and a boardwalk, and the Lessor has space therein to lease; and

WHEREAS, the Lessee desires to lease certain portions of the City Dock, including docking space, two (2) boat slips and a portion of the boardwalk (collectively, the “Premises”), and as more particularly described in Paragraph 1 of this Lease; and

WHEREAS, the Lessee wishes to lease the Premises for the purpose of docking its vessels and carrying on its business of operating a cruise and water taxi service on the Chesapeake Bay and its tributaries; 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 Lessor and the Lessee agree as follows:

1. Identification of the Premises.

a. The Lessor hereby rents and leases to the Lessee, and the Lessee hereby rents and leases from the Lessor, for the Initial Term and each Renewal Term of this Lease (as defined herein) and for the rent and upon the other terms set forth herein, the Premises consisting of two hundred sixty (260) linear feet of docking space on the City Dock, and as further described below:

- (1) The two (2) end boat slips nearest the channel of Spa Creek known as Slips 21 and 22, both of which are suitable for boats not exceeding sixty five (65) feet in length;
- (2) The end of the City Dock adjacent to Slip 22, between two (2) dolphins, for a distance of not more than eighty (80) linear feet; and
- (3) Sixty (60) linear feet along the boardwalk adjacent to the Lessor’s Harbormaster’s office.

b. For purposes of this Lease, the term “City Dock” shall consist of one thousand four hundred twenty-three (1,423) linear feet of total rentable dock space, but shall expressly not include or consist of the north face docking space (i.e. the space shared by the National Sailing Hall of Fame as of the date of this Lease). If the City Dock shall increase in size and/or space

1 during the term of this Lease, then the parties may amend this Lease in writing to adjust the
2 Premises and/or the Rent as applicable and as mutually agreed to by both parties.

3
4 **2. Term; Extension.**

5
6 a. The Lessor leases to the Lessee and the Lessee hereby leases from the Lessor the
7 Premises for a term of one (1) year commencing on July 1, 2022, and ending June 30, 2023 (the
8 “Initial Term”), unless sooner terminated in accordance with the provisions of this Lease. The
9 Initial Term and each Renewal Term shall run with the City’s fiscal year (“FY”) from July 1st
10 through June 30th.

11
12 b. Provided that the Lessee shall not be in default under Paragraph 13 of this Lease
13 and there shall be no Force Majeure Event that prevents the Lessee’s use of the Premises, as
14 further described in Paragraph 14 of this Lease, this Lease shall be automatically renewed for
15 four (4) additional one (1) year terms (each a “Renewal Term” and collectively, “Renewal
16 Terms”) on the same terms and conditions herein, as follows: on March 31, 2018 for FY 2024,
17 on March 31, 2019 for FY 2025, on March 31, 2020 for FY 2026, and on March 31, 2021 for FY
18 2027. In the event of an uncured default under Paragraph 13 of this Lease or a Force Majeure
19 Event that permanently renders the Premises unusable by the Lessee, then this Lease shall
20 automatically terminate at the end of the then-current term. In the event of a substantive, material
21 change in the condition of the Premises, the approval of Lessor’s City Council may be required.

22
23 c. For the purpose of keeping the Mayor and City Council of Annapolis apprised of
24 any changes to the Premises or the Lessee’s use of the Premises, after the end of the Initial Term
25 and any Renewal Term, the Lessee shall, if requested by the Lessor in writing fourteen (14)
26 calendar days prior thereto, attend a City Council meeting or work session to report on any such
27 changes.

28
29 d. This Lease may be extended on the same terms and conditions, and in accordance
30 with this subparagraph, only provided that (1) the Lessee shall not be in default under Paragraph
31 13 of this Lease and (2) there shall be no Force Majeure Event that prevents Lessee’s use of the
32 Premises, as further described in Paragraph 14 of this Lease (the “Extension Requirements”). If
33 such Extension Requirements are met, then the Lessee shall have the right, upon written notice to
34 the Lessor at least ninety (90) calendar days prior to March 31, 2022, to elect to extend this
35 Lease for one (1) additional five (5) year period starting on July 1, 2027 (the “Extension
36 Period”). The Extension Period shall consist of five (5) individual one (1) Renewal Terms, which
37 shall be renewed on March 31, 2022 for FY 2028, on March 31, 2023 for FY 2029, on March 31,
38 2024 for FY 2030, on March 31, 2025 for FY 2031, and on March 31, 2026 for FY 2032. These
39 Renewal Terms shall be treated in the same manner and with the same obligations as those
40 Renewal Terms specified in Paragraph 2(b) above. Any extension and/or other material change
41 to this Lease pursuant to this Paragraph 2 shall be documented in writing and signed by the
42 authorized representatives of each of the parties hereto, but shall not be required to go to the
43 Lessor’s City Council unless there are material changes to any other terms and conditions set
44 forth herein.

45
46 **3. Rent.**

1
2 a. The Lessee shall pay rent unto the Lessor for the Premises during the Initial Term
3 and each Renewal Term (the "Rent") based on a per linear foot rate (the "Rate"). The Rate for
4 the Initial Term and each Renewal Term shall be calculated as the sum, rounded to the closest
5 dollar of: (1) the Lessor's gross revenue for total rented dock space at the City Dock for the
6 twelve months immediately preceding the Initial Term or applicable Renewal Term divided by
7 (2) the Lessor's total rentable dock space at the City Dock consisting of one thousand four
8 hundred twenty-three (1,423) linear feet. The Rent for the Initial Term shall be equal to the sum
9 of (1) the applicable Rate multiplied by (2) the Premises' two hundred sixty (260) linear feet.
10 The Rent for each Renewal Term shall be equal to the sum of (1) the applicable Rate multiplied
11 by (2) the Premises' two hundred sixty (260) linear feet. The Lessor shall send an annual invoice
12 along with documentation of the Rent calculation pursuant to this Paragraph to the Lessee for the
13 Rent in accordance with Paragraph 25.

14
15 b. The Lessee shall pay the Rent within thirty (30) calendar days after receipt of the
16 invoice for Initial Term and each Renewal Term, without deduction, setoff or counterclaim
17 whatsoever, and without demand to the Lessor. Payment shall be made payable to the "City of
18 Annapolis" and shall be sent or delivered to the Finance Director, Finance Department, City
19 Hall, 160 Duke of Gloucester Street, Annapolis, Maryland 21401. Copies of such payment shall
20 be provided to the Lessor's Harbormaster at 1 Dock Street, Annapolis, Maryland 21401.

21
22 c. The Lessee shall also pay as additional rent all sums which the Lessee assumes or
23 agrees to pay under Paragraph 5, Paragraph 7(f) and Paragraph 11(c) of this Lease (the
24 "Additional Rent"), and in the event of any nonpayment thereof, the Lessor shall have all the
25 rights and remedies provided in this Lease and/or by law or at equity.

26
27 d. Except as otherwise provided for in this Lease, any Additional Rent shall be due
28 and payable thirty (30) calendar days after receipt of notice of amount due and payable. All
29 payments shall be made payable to the "City of Annapolis" and shall be sent or delivered to the
30 Finance Director, Finance Department, City Hall, 160 Duke of Gloucester Street, Annapolis,
31 Maryland 21401.

32
33 e. In the event the Rent or Additional Rent under this Lease, or any part thereof,
34 shall remain unpaid for a period of fifteen (15) business days after the day on which it is due,
35 then in addition to all other sums due by the Lessee under this Lease, the Lessee shall pay the
36 Lessor as Additional Rent: (1) late fees equal to one and one-half percent (1.5%), or eighteen
37 percent (18%) per annum, of the unpaid amount, and (2) if an action of any type is filed in any
38 court, reasonable attorney's fees.

39
40 f. The Lessee shall also pay, from time to time, all state, county and local taxes, and
41 assessments of any kind and nature whatsoever, including all interest and penalties on them,
42 which shall or may accrue or required by law during the Initial Term and any Renewal Term of
43 this Lease for the Premises. The Lessee shall pay all such taxes and assessments before any fine,
44 penalty, interest, or cost may be added for nonpayment, and shall furnish to the Lessor, on
45 request, official receipts or other satisfactory proof evidencing such payment. If any tax or
46 assessment is payable in installments over a period of years, the Lessee shall be liable only for

1 payment of those installments falling due and payable during the Initial Term and any Renewal
2 Term, with appropriate pro-ration in case of fractional years. Taxes and assessments shall not be
3 deemed to include any municipal, state or federal income taxes assessed against the Lessor, or
4 any municipal, state or federal capital levy, estate, succession, inheritance or transfer taxes of the
5 Lessor, or any franchise taxes imposed on the Lessor, or any income, profits or revenues tax,
6 assessment or charge imposed on the Rent received as such by the Lessor under this Lease.

7
8 **4. Quiet Enjoyment.**
9

10 The Lessee may peaceably and quietly have, hold and enjoy the Premises for the Initial
11 Term and each Renewal Term of this Lease subject, however, to the terms of this Lease and
12 compliance with those terms.

13
14 **5. Utilities; Trash and Recycling Collection.**
15

16 a. The Lessee's electric service for the Premises shall be monitored by the submeters
17 installed in the brick building on City Dock commonly referred to as the "Bird House" (the
18 "Submeters"). The Lessee and the Lessor's Harbormaster staff shall jointly read the Submeters
19 on the first of each month throughout the Initial Term and each Renewal Term, and send each
20 reading in writing to the Lessor's Finance Department (at the address specified in Paragraph 3)
21 for invoicing as Additional Rent at the Lessor's then-current usage rate for the applicable fiscal
22 year.

23
24 b. The Lessee shall pay Two Hundred Fifty Dollars and No Cents (\$250.00) per
25 month through the Initial Term and each Renewal Term as Additional Rent for trash and
26 recycling collection to be provided by the Lessor for the Premises.

27
28 **6. Vessels Authorized at the Premises.**
29

30 a. The Lessee shall have authority to dock an office barge at the Premises, plus the
31 passenger vessels Harbor Queen, No. 539448; Annapolitan II, No. 544467; Cabaret II, No.
32 1039051; Lady Sarah, No. 1160977; Miss Anne, No. 635636; Miss Anne II, No. 672686;
33 Catherine Marie, No. 1082215; Severn Exposure, No. 1146892; Raven, No. 1239100; and four
34 (4) water taxi launches.

35
36 b. The Lessee may replace any vessel referenced in this Paragraph 6; provided that
37 all replacement vessels shall be of the same size, or substantially the same size, and of the same
38 use as Coast Guard certified passenger vessels. The Lessee shall provide the Lessor with prior
39 written notice of its intent to replace a vessel, and all replacement vessels shall be subject to the
40 Lessor's prior approval, which shall not be unreasonably withheld as long as all replacement
41 vessels meet the standards of Coast Guard certified passenger vessels.

42
43 **7. Use of the Premises.**
44

45 a. The Lessee may use and occupy the Premises during the Initial Term and each
46 Renewal of this Lease only for the purpose of docking its vessels and carrying on its business of

1 operating a cruise and water taxi service on the Chesapeake Bay and its tributaries, including
2 passenger vessels for sightseeing, boat charter and water taxi operations, and for office space
3 from which to conduct the business which this Lease authorizes at the Premises, and for no other
4 purpose whatsoever.

5
6 b. The Lessee accepts the Premises in “as is” condition. The Lessor makes no
7 representation or warranty with respect to the condition or state of the land, or the Premises, or
8 its fitness for any particular use, and the Lessor shall not be liable for any latent or patent defect
9 thereon. Unless as otherwise expressly provided in this Lease, the Lessor does not make, and
10 specifically disclaims, any representations, warranties or covenants of any kind or character,
11 express or implied, with respect to the nature, condition, economical, functional, environmental
12 or physical condition of the Premises.

13
14 c. The Lessee shall not use or occupy or permit the Premises, or any part thereof, to
15 be used or occupied, nor do or permit anything to be done in or on the Premises in a manner
16 which would in any way (1) violate any of the terms of this Lease; (2) make it difficult for either
17 the Lessor or the Lessee to obtain fire or other insurance required by this Lease at standard rates;
18 (3) cause or create a public or private nuisance in or on the Premises or the City Dock; or (4)
19 tend to impair or interfere with the character, reputation or appearance of the Premises or the
20 City Dock.

21
22 d. The Lessee shall not discharge or board passengers at the plaza located at that
23 portion of the City Dock closest to the Market House, commonly known as the end of Ego Alley.

24
25 e. The Lessor shall attempt to keep the Premises free and clear of unauthorized
26 vessels when the Lessee's vessels are away from the Premises, but the Lessor shall be under no
27 obligation or responsibility to do so, nor shall the Lessor assume or incur any liability for failing
28 to do so, and the Lessee hereby unconditionally and completely waives and releases all
29 complaints, claims, suits and actions of all types, both administrative and judicial, against the
30 Lessor in connection therewith.

31
32 f. The Lessor shall have the right to remove from the Premises, without any liability
33 whatsoever for so doing, and without prior or subsequent notice to the Lessee, any alterations
34 made by the Lessee which are made without the consent required in Paragraph 11 of this Lease.
35 The cost of removal and/or repairs associated with any such unauthorized alterations, including
36 any administrative costs incurred by the Lessor, shall be billed to the Lessee, and shall be due
37 and payable by the Lessee as Additional Rent.

38
39 g. The Lessee shall conduct its business in and about the City Dock and the Premises
40 in an orderly manner, and shall keep its vessels neat and clean and shall maintain the area
41 immediately adjacent to its mooring area on the Premises and the Premises itself in a neat and
42 clean manner.

43
44 h. Amplified music or other amplified sound on the Premises shall not exceed the
45 maximum decibel levels specified in Chapter 11.12 of the Code of the City of Annapolis, as may
46 be amended.

1
2 **8. Lessor's Right to Temporary Use of the Premises.**
3

4 a. The Lessor shall have the right and privilege, with the consent of the Lessee,
5 which consent shall not be unreasonably withheld, on not less than seven (7) calendar days prior
6 notice from the Lessor to the Lessee, to reclaim and use all or some of the Premises in order to
7 meet contractual obligations relating to the annual fall boat shows for no more than the number
8 of days specified in the applicable City Council-approved lease for such annual fall boat shows
9 at or on the City Dock, and to accommodate certain other special events, shows or programs
10 conducted from time to time at or on the City Dock. In such event, the Lessee shall vacate the
11 designated portion of the Premises to which the consent applies, and remove all of its vessels
12 from that designated portion of the Premises during the period specified in the Lessor's notice.
13 The Lessor and the Lessee shall use best efforts to reasonably cooperate with one another to
14 address both parties' concerns regarding any such special event, show, or program.
15

16 b. The Lessee shall make reasonable good faith efforts to communicate and
17 cooperate with the Lessor's Harbormaster regarding any extended periods of time other than
18 Paragraph 8(a) above when the Premises will be vacant and the Lessor's Harbormaster may seek
19 consent from the Lessee for temporary use of all or a portion of the Premises, which consent may
20 be granted at the sole discretion of the Lessee.
21

22 c. If the Lessee vacates any portion of the Premises due to any events, shows or
23 programs, other than the annual fall boat shows conducted at or on the City Dock, as described in
24 Paragraph 8(a) above, the Lessee shall be entitled to a pro rata abatement of the Rent due
25 pursuant to this Lease based on the ratio which the number of days of vacancy specified in the
26 Lessor's notice bears to the total Rent, and based on the portion of the Premises vacated.
27

28 **9. Lessor Rights.**
29

30 a. The Lessor and its employees, representatives, agents, and servants, including any
31 builder or contractor employed by the Lessor, shall have the absolute unconditional right at any
32 and all reasonable times, after not less than twenty-four (24) hours prior notice to the Lessee
33 (except in the case of an emergency where no such notice is required), to enter the Premises for
34 any of the following purposes: (a) to inspect the Premises; (b) to make such repairs and/or
35 changes in the Premises as the Lessor may deem necessary or proper; (c) to enforce and carry out
36 any provision of this Lease; (d) for any purpose relating to the safety, protection or preservation
37 of the Premises; or (e) for any other purpose related to the enforcement of this Lease.
38

39 b. The Lessor shall use reasonable efforts to minimize interference to the Lessee's
40 business or use of the Premises when making inspections or repairs, but the Lessor shall not be
41 required to perform the inspections or repairs at any time other than during normal working
42 hours.
43

44 **10. Lessee Equipment, Vessels, Personal Property.**
45

1 The Lessee shall retain ownership of all of its trade and business equipment, vessels and
2 personal property from time to time installed or located on the Premises. The Lessee may remove
3 any such fixtures, equipment or vessels (subject to Paragraph 6 of this Lease) at any such time
4 during the Initial Term and any Renewal Term, and shall remove all of it prior to the expiration
5 or earlier termination of this Lease. Removal shall not cause any damage to the Premises or the
6 Property.

7
8 **11. Repairs and Maintenance.**

9
10 a. The Lessee shall not make or cause to be made any alterations, additions, or
11 improvements to the Premises without obtaining the prior written consent of the Lessor that may
12 be withheld in the Lessor's sole and absolute discretion.

13
14 b. Prior to the Lessee repairing, replacing or otherwise altering any aspect of the
15 Premises or the Property, the Lessee shall provide the Lessor with thirty (30) calendar day prior
16 written notice specifying the need for and nature of any and all such repairs, replacements or
17 alternations, and providing the Lessor with a copy of all applicable contracts or agreements with
18 any third party hired by the Lessee to perform such repairs, replacements or alterations. The
19 Lessee or its contractors shall not start or undertake any such repairs, replacements or alterations
20 without the prior written approval of the Lessor, and without first obtaining all necessary permits
21 and governmental approvals. Such approved repairs, replacements or alterations shall be made
22 and rendered by professional contractors licensed in the State of Maryland, be done in a good
23 and workmanlike manner, and shall comply in all respects with all applicable federal, state, and
24 local laws, ordinances and regulations, including, but not limited to, zoning, building and fire
25 code requirements.

26
27 c. If the Lessor is required to make any repairs to such portions of the Premises by
28 reason, in whole or in part, of the negligent or willful act or failure to act by the Lessee or the
29 Lessee's employees, agents, contractors, guests or invitees, the Lessor may collect the cost of
30 any and all such repairs from the Lessee as Additional Rent.

31
32 d. The Lessor shall be responsible for the maintenance and repair, including making
33 any necessary replacements of same, of the docks, sidewalks, paving, pilings, dolphins and other
34 structures, improvements, fixtures and equipment owned by the Lessor at the City Dock, in the
35 City's sole discretion, and subject only to applicable laws, regulations and City appropriations.
36 The Lessor shall be responsible for removal of trash and other rubbish from the docks, sidewalks
37 and paving owned by the Lessor at the City Dock, in the City's reasonable discretion, and subject
38 to City staffing and financial restrictions. The Lessor shall arrange for the removal of all snow
39 and ice from the docks, sidewalks and paving owned by the Lessor at the City Dock, which
40 removal shall occur after the City, in its sole discretion, has addressed all other City streets,
41 facilities, and areas that may need snow removal.

42
43 e. The Lessor shall have no liability to the Lessee by reason of any inconvenience,
44 annoyance, interruption, or injury to business or other use or occupancy arising from making any
45 repairs or changes that the Lessor is required or permitted to make in or to any portion of the
46 Premises pursuant to this Lease or by law.

1
2 **12. Security, Property Loss Damage.**
3

4 a. The Lessee assumes all risks associated with the security of the Premises. The
5 Lessor shall have no obligation or duty with regard to security. The Lessee shall police and
6 maintain the Premises in a clean, safe and secure manner.
7

8 b. The Lessor, its elected officials, appointees, directors, employees, agents,
9 contractors and representatives (the "Indemnified Parties") shall not be liable for any damage to
10 property of the Lessee or of others located on the Premises or entrusted to its or their employees,
11 nor for the loss of any property by theft or otherwise, nor for any injury or damage to persons or
12 property resulting from theft, casualty, acts of God, fire of every nature and type, the
13 accumulation of snow or ice, explosion, steam, gas, electricity, wind, water, rain or snow, or
14 from the pipes, appliances or plumbing works of the same or from the street or subsurface or
15 from any other place, or from any other cause whatsoever; nor shall the Lessor be liable for any
16 such damage caused by other tenants or persons in the Premises, or for damage caused by
17 operations in construction of any public or quasi-public works. All property of the Lessee kept or
18 stored on the Premises shall be so kept at the risk of the Lessee only and the Lessee shall
19 indemnify, defend and hold the Indemnified Parties harmless from any claims arising out of
20 damage to the same, including subrogation claims by the Lessee's insurance carrier.
21

22 **13. Default; Right to Cure; Termination.**
23

24 a. In the event the Lessee should materially default in performance of its obligations
25 under this Lease, and such default continues for more than thirty (30) calendar days after the
26 Lessor has given written notice to the Lessee and opportunity to cure such default, the Lessor
27 shall have the right to immediately terminate the Lease and/or to pursue reimbursement from the
28 Lessee for any damages to the Lessor resulting from the Lessee's material default of this Lease.
29 The Lessee shall not be deemed to have defaulted under this Lease unless and until (i) the Lessee
30 is given written notice of the alleged material default in accordance with the notice provisions of
31 this Lease, and (ii) the condition constituting the alleged material default is not cured within
32 thirty (30) calendar days after such notice is given; provided, however, in the event the condition
33 complained of is not capable of being cured within such thirty (30) calendar days, the Lessee
34 shall have such additional time as required if within such thirty (30) calendar day period the
35 Lessee commences the cure and diligently prosecutes same to completion. For purposes of this
36 Paragraph 13, "materially default" and/or "material default" shall mean one (1) or more of the
37 following:
38

- 39 (1) If any representation or warranty, expressed or implied, of the Lessee and
40 pertaining to this Lease shall prove at any time to be incorrect or misleading in
41 any material respect either on the date when made or throughout the Initial Term
42 or any Renewal Term of this Lease; or
43 (2) If the Lessee shall fail to comply, fail to fulfill, or otherwise violate any of the
44 terms, conditions, or obligations contained in this Lease; or
45 (3) If the Lessee becomes insolvent or generally does not pay its debts as they
46 become due, or if a petition for relief is filed by the Lessee in a bankruptcy court,

1 or if the Lessee applies for, consents to, or acquiesces in the appointment of a
2 trustee, custodian, or receiver for the Lessee or any of its assets and property, or
3 makes a general assignment for the benefit of creditors, or in the absence of such
4 application, consent, or acquiescence, a trustee, custodian, or receiver is appointed
5 for the Lessee or for a substantial part of the assets and property of the Lessee and
6 is not discharged within thirty (30) calendar days; or

7 (4) If any bankruptcy, reorganization, debt arrangement, or other proceeding or case
8 under any bankruptcy or insolvency or any dissolution or liquidation proceeding
9 is instituted against the Lessee and is consented to or acquiesced to by the Lessee
10 or remains for sixty (60) calendar days undismissed; or

11 (5) If the Lessee loses or forfeits its corporate status, or ceases to be in good standing
12 with the State of Maryland.

13
14 b. There are currently in effect leases between the Lessor and the Lessee for the
15 Premises for the years of 2017 through 2022. In the event the Lessee should materially default in
16 performance of its obligations in any one (1) of the above years, such material default shall also
17 constitute a material default in the leases for all years subsequent to it, including this Lease. If
18 the material default continues for more than thirty (30) calendar days after the Lessor has given
19 written notice to the Lessee of such material default, the Lessor shall have the right to terminate
20 any of the leases for any one (1) or more of the years remaining in effect, including this Lease.
21 Otherwise, execution of this Lease shall have no effect on those leases for the years of 2017
22 through 2022.

23
24 **14. Force Majeure Event(s).**

25
26 a. Notwithstanding any other terms or provisions of this Lease, in the event the
27 Lessor is temporarily or permanently prevented, restricted or delayed in the performance of any
28 or all of the duties and obligations imposed upon or assumed by it hereunder, by act of the
29 General Assembly of Maryland, by a court of competent jurisdiction, by administrative delay not
30 due to the fault of the Lessor (and its members and agents), or by an unforeseen event, not due to
31 the fault of the Lessor (and its members and agents), including but not limited to unforeseeable
32 causes beyond its control, such as , strikes, fire, storm, sea level rise, or other casualty, acts of God,
33 or force majeure event (each, a "Force Majeure Event"), or other unforeseen occurrences which
34 render impossible or not economically feasible the fulfillment of this Lease, then the Lessor shall
35 not be liable directly or indirectly for any claims caused to or suffered by the Lessee or any other
36 person in connection with or as a result of such prevention, restriction or delay, and the Lessee
37 shall not be liable for the payment of Rent for the applicable term of the Lease.

38
39 b. The Lessee shall not be responsible for delays in the performance of any or all of
40 the duties and obligations imposed upon or assumed by it hereunder caused solely by
41 unforeseeable causes beyond its control or the control of its subcontractors or suppliers of
42 materials, such as a Force Majeure Event or other unforeseen occurrences.

43
44 c. In case of any loss of or damage to the Premises as the result a Force Majeure Event,
45 the Lessor in its sole and absolute discretion may determine whether or not, and to what extent, to
46 repair or restore any of the Premises. If the Lessor decides to repair or restore, and any portion of the

1 Premises remains suitable for the Lessee's use, then the Lessee shall be entitled to utilize that
2 portion of the Premises. If the Lessor decides not to repair and restore the Premises, then the Lessee
3 may in its discretion elect to remain on the Premises under the provisions of this Lease or to
4 terminate this Lease, it being the Lessee's sole responsibility to restore and/or repair such portions
5 of the Premises as it may elect to undertake. If any portion of the Premises is rendered unusable
6 during the Initial Term or any Renewal Term as a result of a Force Majeure Event, the Rent due
7 and payable shall be reduced in direct proportion to the area of the Premises rendered unusable.
8 The Lessee shall present documentation including measurements and calculations to support any
9 claim of reduced Premises. In addition, the Lessee shall be entitled to a credit against Rent for all
10 reasonable and documented costs in performing repairs to the Premises as a result of any such
11 Force Majeure Event.

12
13 d. The Lessor and the Lessee shall work cooperatively to determine possible
14 alternatives, solutions and/or remedies to any prevention, restriction, or delay that may occur.

15
16 e. The party claiming the benefit of this Paragraph shall notify the other party within
17 twenty-four (24) hours of the occurrence of a Force Majeure Event and shall, as soon as possible
18 thereafter, advise the other party of a good faith estimate of the time that will be required before
19 the delay is ended.

20
21 **15. Signs.**

22
23 All signs that the Lessee desires to post on the Premises shall be approved in writing and
24 in advance by the Lessor, the Historic Preservation Commission of the City of Annapolis, and
25 any other agency if required by law. The Lessee shall maintain any signs, as may be approved by
26 this Paragraph, and shall repair and replace when necessary to keep in good condition and repair
27 at all times.

28
29 **16. Compliance with Law; No Peddlers, Hawkers, Itinerant Merchant License.**

30
31 a. The Lessee, at its sole cost and expense, shall keep in force all licenses, consents
32 and permits necessary for the lawful use of the Premises for the purposes of this Lease. The
33 Lessee, at its sole cost and expense, shall promptly comply with and do all things required by
34 any notice served upon it or upon the Lessor in relation to the Premises or any part thereof, from
35 any of the departments or agencies of the Lessor, a county, the State of Maryland, or the United
36 States, if the same shall be caused by the Lessee's use of the Premises. The Lessee shall pay all
37 costs, expenses, claims, fines, penalties, and damages that may in any manner arise out of the
38 failure of the Lessee to comply.

39
40 b. A license for peddlers, hawkers, and itinerant merchants pursuant to Chapter 7.40
41 of the Annapolis City Code is not required to be obtained by the Lessee during the Initial Term
42 or any Renewal Term of this Lease and/or for the purpose of using the Premises.

43
44 c. The Lessee shall have a reasonable time to correct any violation under Paragraph
45 16(a).

46

1 **17. Insurance.**
2

3 a. The Lessee shall for the duration of this Lease maintain and pay the premiums for
4 a policy of insurance covering liability for personal injury and property damage arising out of its
5 business and operations pursuant to this Lease in the amount of no less than One Million Dollars
6 (\$1,000,000.00) per person for bodily injury and property damage and Three Million Dollars
7 (\$3,000,000.00) for each occurrence in the aggregate.
8

9 b. The Lessee shall have adequate workers' compensation insurance covering its
10 employees who enter and/or work on the Premises, and in no event shall the coverage in such
11 policy be less than One Million Dollars (\$1,000,000.00) per person for accidental bodily injury
12 and occupational disease.
13

14 c. The insurance policy or policies shall specifically name the "City of Annapolis,
15 its elected officials, appointees, directors, employees, agents, contractors and representatives" as
16 additional insureds.
17

18 d. The Lessee's insurer or insurers shall be authorized to write the required
19 insurance, approved by the Insurance Commissioner of the State of Maryland, and subject to the
20 approval of the Lessor's City Attorney. The form and substance of the Lessee's insurance policy
21 or policies shall also be subject to reasonable approval by the Lessor's City Attorney, and shall
22 be submitted to the City Attorney at 160 Duke of Gloucester Street, Annapolis, Maryland 21401,
23 with a copy to the Lessor's Harbormaster at 1 Dock Street, Annapolis, Maryland 21401, for such
24 approval not less than thirty (30) calendar days prior to the Lessee's occupancy of the Premises.
25

26 e. The certificate for each insurance policy or policies shall contain a statement on
27 its face that the insurer will not cancel the policy or fail to renew the policy, whether for
28 nonpayment of premium, or otherwise, whether at the request of the Lessee or for any other
29 reason, except after thirty (30) calendar days advance written notice mailed by the insurer or the
30 Lessee to the Lessor's City Attorney, and that such notice shall be transmitted postage prepaid,
31 return receipt requested.
32

33 f. The obligations of the Lessee under this Paragraph 17 are part of but do not limit
34 or satisfy the Lessee's obligations under the remainder of this Lease.
35

36 **18. Surrender of Premises.**
37

38 a. On the last day or earlier termination of this Lease, the Lessee shall vacate the
39 Premises and leave it in good condition and repair, normal wear and tear excepted. If the
40 Premises are not surrendered when required, the Lessee shall indemnify, defend and hold the
41 Indemnified Parties (as defined in Paragraph 12 of this Lease) harmless against loss or liability
42 resulting from the delay by the Lessee in vacating the Premises, including, without limitation,
43 any claims made by any succeeding tenant or other occupant founded on such delay. Any
44 holding over with the consent of the Lessor after the termination of this Lease shall be construed
45 to be a tenancy from month-to-month upon the same terms and conditions as provided in this
46 Lease, to the extent applicable.

1
2 b. On the last day or earlier termination of this Lease, the Lessee shall, within thirty
3 (30) calendar days and at its own cost and expense, dismantle and remove all of its personal
4 property from the Premises. Any such property not removed at the expiration of this Lease, and
5 the Lessee's continued failure to remove the same within thirty (30) calendar days after receipt
6 of notice from the Lessor, shall be deemed abandoned and, at the election of the Lessor, shall
7 become the property of the Lessor without payment of any kind to the Lessee, without increasing
8 the Lessor's liability to the Lessee, and for any disposition of it as the Lessor decides to make.
9

10 c. Within ten (10) calendar days of vacating, the Lessor shall tour the Premises, with
11 the Lessee present if possible, to determine the condition of the Premises. Any items determined
12 to be in need of correction or repair shall be corrected or repaired by the Lessor, and shall be
13 invoiced by the Lessor and paid by the Lessee within thirty (30) calendar days of such invoicing.
14

15 **19. Indemnification.**

16 a. The Lessee shall indemnify, defend, and hold harmless the Indemnified Parties
17 (as defined in Paragraph 12 of this Lease) from and against any and all actions, suits, causes of
18 action, judgments, claims, and liabilities for loss, injury, damages and/or expenses suffered or
19 alleged to have been suffered by any person or to any property due to or alleged to be due to an
20 act, omission or the negligence of the Lessee, its officers, employees, contractors or other agents,
21 directly or indirectly, in connection with this Lease or the use and occupancy of the Premises or
22 any part of the Premises, whether or not the result of negligence or other fault, during the Initial
23 Term and any Renewal Term of this Lease.
24

25 b. In the event the Lessor is required to defend any such actions, suits, causes of
26 action, judgments, claims or other liabilities, the Lessor shall be entitled to participate in its
27 defense, either in whole or in part as it so deems, and to select its own attorneys to provide a
28 defense at the sole expense, for purposes of attorney fees and litigation costs, of the Lessee.
29

30 c. The Lessee shall reimburse the Lessor, within thirty (30) calendar days after
31 demand for such reimbursement, for any damage done to the Lessor's buildings, facilities,
32 equipment or property caused by an act, omission or the negligence of the Lessee, its officers,
33 employees, contractors or other agents, during the Initial Term or any Renewal Term, or the
34 Lessee's use and occupancy of the Premises or any part of the Premises, except for that caused
35 by reasonable and ordinary wear and tear. The Lessee may request the Lessor to provide
36 reasonably sufficient documentation or other proof of such damage prior to any reimbursement.
37 If the Lessee disputes any request for reimbursement, it may appeal such request to the Lessor's
38 City Manager and/or his/her authorized designee for review and reconsideration.
39

40
41 **20. Impairment of the Lessor's Title.**

42 The Lessee shall not have the right, power, or permission to do any act or to make any
43 agreement that may create, give rise to, or be the foundation for, any right, title, interest, lien,
44 charge, or other encumbrance on the estate of the Lessor in the Premises. The Lessee shall not
45 permit any part of the Premises to be used by any person or persons or by the public at any time
46

1 or times during the Initial Term or any Renewal Term of this Lease, in such manner as might
2 tend to impair the Lessor's title to or interest in the Premises, or in such manner as might make
3 possible a claim or claims of adverse use, adverse possession, prescription, dedication, or other
4 similar claims of, in, to, or with respect to the Premises.

5
6 **21. Immunities; Reservation of Governmental Authority.**
7

8 a. The Lessor reserves and shall be entitled to enforce any and all immunities, partial
9 or total, statutory or common law, in any proceeding that is initiated as a result of this Lease,
10 whether initiated by the Lessor, the Lessee or any third party.

11
12 b. The Lessor reserves the right at all times to exercise full governmental control and
13 regulation with respect to all matters connected with this Lease not inconsistent with the terms of
14 this Lease.

15
16 c. No remedy provided by this Lease or reserved to the Lessor is intended to be
17 exclusive of any other remedies provided for in this Lease, and each such remedy shall be
18 cumulative, and shall be in addition to every other remedy given under this Lease, or now or
19 hereafter existing at law or in equity or by statute. Every right, power and remedy given to the
20 Lessor shall be concurrent and may be pursued separately, successively or together against the
21 Lessee, and every right, power and remedy given to the Lessor may be exercised from time to
22 time as often as may be deemed expedient by the Lessor.

23
24 **22. Assignment.**
25

26 The Lessee shall not assign, transfer, or otherwise dispose of this Lease without the prior
27 written consent of the Lessor, but such consent shall not be unreasonably withheld or delayed.
28 Assignment or transfer of this Lease to a wholly owned subsidiary of the Lessee may be made
29 without the Lessor's consent. A transferee with a minimum of five (5) years experience
30 operating a waterfront tour and cruise business of a scale and quality comparable to that of the
31 Lessee, or, in the alternative, to operate a maritime business that qualifies as an "amusement"
32 under the Maryland State tax laws, and to otherwise perform the obligations of the Lease at the
33 same level as the Lessee shall be deemed approved.

34
35 **23. Independent Contractor.**
36

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

40
41 **24. Lessee's Representations.**
42

43 The Lessee hereby represents and warrants the following:
44

1 a. The Lessee is a corporation, duly formed and validly existing under the laws of
2 the State of Maryland and is qualified to do business and is in good standing in the State of
3 Maryland.

4 b. The Lessee has the power and authority to consummate the obligations and
5 responsibilities contemplated hereby, and has taken all necessary action to authorize the
6 execution, delivery and performance required under this Lease.
7

8 **25. Notice.**
9

10 a. All notices pursuant to this Lease shall be by regular mail or email, except notice
11 of default or termination, which shall be by certified mail, return receipt requested.
12

13 b. Notice to the Lessor shall be to the City Attorney, 160 Duke of Gloucester Street,
14 Annapolis, Maryland 21401, cityattorney@annapolis.gov.
15

16 c. Notice to the Lessee shall be to Debbie Gosselin at PO Box 3350, Annapolis,
17 Maryland 21403, debbie@watermarkjourney.com.
18

19 d. The parties shall timely advise each other in writing of any change of address.
20

21 **26. Venue, Waiver of Jury Trial and Governing Law.**
22

23 a. Venue for all judicial proceedings which result from this Lease shall be the courts
24 of Anne Arundel County, Maryland.
25

26 b. The parties hereby expressly waive trial by jury in any such judicial proceeding.
27

28 c. The laws of the State of Maryland shall govern all matters relating to this Lease.
29

30 **27. Integration; Modification or Amendment.**
31

32 a. This Lease sets forth the entire agreement between the parties relative to the
33 subject matter of this Lease. No representation, promise or condition, whether oral or written, not
34 incorporated herein shall be binding upon either party to this Lease. This Lease shall not be
35 waived, modified or amended except in a writing signed by both parties and witnessed.
36

37 b. No act by any representative or agent of the Lessor, other than such a written
38 amendment and acceptance by the Lessor, shall constitute an acceptance thereof.
39

40 **28. Binding Effect.**
41

42 The terms of this Lease shall be binding upon, enforceable against, and for the benefit of
43 the parties and their successors and assigns.
44

45 **29. Severability.**
46

1 If any of the provisions of this Lease are declared by a court or other lawful authority to
2 be unenforceable or invalid for any reason, the remaining provisions hereof shall not be affected
3 thereby and shall remain enforceable to the full extent permitted by law.
4

5 **30. Survival.**

6
7 Those paragraphs in this Lease which by their nature are intended to survive shall survive
8 the termination of this Lease.
9

10 **31. Authorization.**

11
12 This Lease is authorized by the Council of the City of Annapolis pursuant to O-14-17.
13

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

17 **CHESAPEAKE MARINE TOURS, INC.**

18
19
20 _____
21 Witness

By: _____
Debbie Gosselin, President (Seal)

22
23
24 ATTEST:

City of Annapolis, Maryland

25
26
27 _____
28 Regina C. Watkins-Eldridge, MMC,
29 City Clerk

By: _____
Michael J. Pantelides
Mayor

30

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REVIEWED AND APPROVED BY:

Thomas Andrews, City Manager

APPROVED FOR FINANCIAL SUFFICIENCY:

Bruce T. Miller, Director
Finance Department

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

City Attorney