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..Title
Chesapeake Nautical Cruises, LLC, Lease – For the purpose of authorizing a City of Annapolis pilot lease with Chesapeake Nautical Cruises, LLC, for docking space at City Dock; and generally related to City Dock boat slips and boardwalk.

..Body

CITY COUNCIL OF THE
City of Annapolis

Ordinance 20-23

Introduced by: Alderman Schandelmeier

Referred to
Finance Committee
Environmental Matters Committee

AN ORDINANCE concerning

Chesapeake Nautical Cruises, LLC, Lease

FOR the purpose of authorizing a City of Annapolis pilot lease with Chesapeake Nautical Cruises, LLC, for docking space at City Dock; and generally related to City Dock boat slips and boardwalk.

WHEREAS, The City 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 City has space therein to lease; and

WHEREAS, The Tenant desires to lease certain portions of the City Dock as a pilot lease, including docking space (collectively, the Premises”), and as more particularly described in Paragraph 1 of this Lease; and

WHEREAS, The Tenant wishes to lease the Premises for the purpose of docking its vessels and carrying on its business related to its commercial vessels s/v “Sea Spirit” (Manufacture: DMR Yachts, Year: 1989, Length: 56', Beam: 16', Draft: 4'6", USCG Number: 927757) plus jet boat (Manufacturer: Smoky Mountain Jetboats, Year: 2014, Length: 18'6", Beam: 7'6", Draft: 2', USCG Number: CG1289885) (each a “Vessel” and collectively, the “Vessels”); and

WHEREAS, The parties desire to enter into this Lease that defines the rights, duties, and liabilities of the parties for a pilot term of use and occupancy.

Explanation:

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1 **NOW, THEREFORE,**

2 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS**
3 **CITY COUNCIL** that the proposed lease between the City of Annapolis and Chesapeake
4 Nautical Cruises, LLC, for the rental of certain municipal property in the general City Dock
5 area, as described in the lease, a copy of which is attached hereto and made a part hereof,
6 for portions of FY 2023 and 2024, more specifically described in the attached lease, and
7 subject to the option to expand or reduce the number of days of the tenancy as provided in
8 the lease, is hereby approved and the Mayor is hereby authorized to execute the lease on
9 behalf of the City of Annapolis.

10
11 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
12 **ANNAPOLIS CITY COUNCIL** that it is expressly found by the City Council that the
13 property to be leased will better serve the public need for which the property was acquired
14 by stimulating local interest in the boating industry, encouraging visitors and residents of
15 the City to visit the harbor and dock area, and providing rental income along with other
16 economic benefits to the City.

17
18 **SECTION III: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
19 **ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect immediately upon
20 passage.

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Chartered 1708

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

LEASE AGREEMENT (CITY DOCK) WITH CHESAPEAKE NAUTICAL CRUISES, LLC

1 **THIS LEASE AGREEMENT** (“Lease”) is made this ____ day of
2 _____, 20__, by and between the City of Annapolis, a municipal corporation
3 of the State of Maryland (the “City”), and **CHESAPEAKE NAUTICAL CRUISES, LLC**, a
4 Maryland limited liability company (the “Tenant”).

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

8 **WHEREAS**, the Tenant desires to lease certain portions of the City Dock as a pilot
9 lease, including docking space (collectively, the Premises”), and as more particularly
10 described in Paragraph 1 of this Lease; and

11 **WHEREAS**, the Tenant wishes to lease the Premises for the purpose of docking
12 its vessels and carrying on its business related to its commercial vessels s/v “Sea Spirit”
13 (Manufacture: DMR Yachts, Year: 1989, Length: 56’, Beam: 16’, Draft: 4’6”, USCG
14 Number: 927757) plus jet boat (Manufacturer: Smoky Mountain Jetboats, Year: 2014,
15 Length: 18’6”, Beam: 7’6”, Draft: 2’, USCG Number: CG1289885) (each a “Vessel” and
16 collectively, the “Vessels”); and

17 **WHEREAS**, the parties desire to enter into this Lease that defines the rights,
18 duties, and liabilities of the parties for a pilot term of use and occupancy.

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

22 **1. Identification of the Premises; Restrictions.**

23 a. The City hereby rents and leases to the Tenant, and the Tenant hereby
24 rents and leases from the City, for the Term of this Lease (as defined herein) and for the
25 rent and upon the other terms set forth herein, the Premises consisting of a changeable
26 ~~seventy-nine~~ (79) linear feet of docking space in the City Dock area, which actual docking
27 space will differ as more particularly described and depicted in Attachment A attached
28 hereto and incorporated herein.

29 b. The Tenant understands and hereby agrees that the Premises is
30 encumbered by the following restriction(s): Burtis/Long Dock, Easement Agreement dated
31 December 15, 2021 by and between the City and the State of Maryland to the use of the
32 Department of Natural Resources recorded in the Land Records of Anne Arundel County,
33 Maryland in Book 38521, Page 338.

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1 c. The Premises and this Lease shall not include any parking spaces or areas
2 for the Tenant, or its employees, guests, invitees, attendees, or visitors.

3 **2. Term; Extension.**

4 a. The City leases to the Tenant and the Tenant hereby leases from the City
5 the Premises for only those certain dates (each a "Use Date" and collectively, the "Use
6 Dates") as specified below during a term commencing on May 9, 2023, and ending August
7 27, 2023 (the "Term"), unless sooner terminated in accordance with the provisions of this
8 Lease:

9 (i) During the month of May 2023, the Tenant's use and occupancy of the
10 Premises shall be limited to the dates of May 9-23, 2023;

11 (ii) During the month of June 2023, the Tenant's use and occupancy of the
12 Premises shall be limited to the dates of June 11-25, 2023;

13 (iii) During the months of June/July 2023, the Tenant's use and occupancy of
14 the Premises shall be limited to the dates of June 30-July 14, 2023; and

15 (iv) During the month of August 2023, the Tenant's use and occupancy of the
16 Premises shall be limited to the dates of August 13-27, 2023.

17 b. In the event of a substantive, material change in the condition of the
18 Premises, the approval of City Council may be required.

19 c. For the purpose of keeping the Mayor and City Council of Annapolis
20 apprised of any changes to the Premises or the Tenant's use of the Premises, after the
21 end of the Term, the Tenant shall, if requested by the City in writing fourteen (14) calendar
22 days prior thereto, attend a City Council meeting or work session to report on any such
23 changes.

24 **3. Rent.**

25 a. As Rent for the Premises, the Tenant shall pay unto the City Twelve
26 Thousand Three Hundred Seventy-Five Dollars and Thirty-Two Cents (\$12,375.32)
27 payable in equal monthly installments of Three Thousand Ninety-Three Dollars and
28 Eighty-Three Cents (\$3,093.83) (collectively, the "Rent").

29 b. Each payment shall be made promptly when due, in advance, on the first
30 day of each month, without deduction, setoff or counterclaim whatsoever, and without
31 demand. All payments shall be made payable to the "City of Annapolis" and shall be sent
32 or delivered to the City's Harbormaster, 1 Dock Street, Annapolis, Maryland 21401.

33 c. The Tenant shall also pay as additional rent all sums which the Tenant
34 assumes or agrees to pay under Paragraph 5, Paragraph 7(f) and Paragraph 11(c) of this
35 Lease (the "Additional Rent"), and in the event of any nonpayment thereof, the City shall
36 have all the rights and remedies provided in this Lease and/or by law or at equity.

37 d. Except as otherwise provided for in this Lease, any Additional Rent shall
38 be due and payable thirty (30) calendar days after receipt of notice of amount due and

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1 payable. All payments shall be made payable to the "City of Annapolis" and shall be sent
2 or delivered to the City's Harbormaster, 1 Dock Street, Annapolis, Maryland, 21401.

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

9 f. The Tenant shall also pay, from time to time, all state, county and local
10 taxes, and assessments of any kind and nature whatsoever, including, but not limited to
11 any applicable admissions and amusement tax, and further including all interest and
12 penalties on them, which shall or may accrue or required by law during the Term of this
13 Lease for the Premises. The Tenant shall pay all such taxes and assessments before any
14 fine, penalty, interest, or cost may be added for nonpayment, and shall furnish to the City,
15 on request, official receipts or other satisfactory proof evidencing such payment. If any tax
16 or assessment is payable in installments over a period of years, the Tenant shall be liable
17 only for payment of those installments falling due and payable during the Term, with
18 appropriate pro-ration in case of fractional years. Taxes and assessments shall not be
19 deemed to include any municipal, state or federal income taxes assessed against the City,
20 or any municipal, state or federal capital levy, estate, succession, inheritance or transfer
21 taxes of the City, or any franchise taxes imposed on the City, or any income, profits or
22 revenues tax, assessment or charge imposed on the Rent received as such by the City
23 under this Lease.

24 **4. Quiet Enjoyment.**

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

28 **5. Utilities; Trash and Recycling Collection.**

29 a. The Tenant's electric service for the Premises shall be paid monthly as
30 Additional Rent at the following flat rates, as applicable, of Four Dollars and No Cents
31 (\$4.00) per 24-hour period for a 30 AMP and/or Seven Dollars and Fifty Cents (\$7.50) per
32 24-hour period for a 50 AMP.

33 b. The Tenant shall pay the City monthly, in accordance with Paragraph 3(b),
34 a waste disposal fee of Fifty Dollars and No Cents (\$50.00) per month, and additionally,
35 at its sole cost and expense, shall be responsible for keeping the Premises free of debris,
36 trash and refuse, and shall remove (or cause to be removed) all trash and recycling from
37 the Premises. The Tenant shall use concerted efforts to prevent any debris, trash and
38 refuse from the Vessels from ending up in City waters.

39 c. The Tenant is strongly encouraged to ensure that its operations in
40 connection with the Lease minimize the use of plastic and incorporate recycling practices.

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1 d. Fresh water to wash down the Vessels may be available at the Premises
2 with prior permission from the City's Harbormaster.

3 **6. Vessels Authorized at the Premises.**

4 The Tenant shall only have authority to dock the Vessels at the Premises.

5 **7. Use of the Premises.**

6 a. The Tenant may use and occupy the Premises during the Term of this
7 Lease only for the purpose of docking its vessel(s) and carrying on its business of
8 exhibiting and providing onboard sailing opportunities by the Tenant related to the
9 Vessels, which this Lease authorizes at the Premises, and for no other purpose
10 whatsoever. The only commercial activity permitted at the Premises is commercial activity
11 allowed pursuant to Title 15 of the City Code. Except as otherwise specified in Paragraph
12 8, of this Lease, the Vessels shall be permitted to come and go from the Premises as
13 determined by the Tenant.

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

21 c. The Tenant shall not use or occupy or permit the Premises, or any part
22 thereof, to be used or occupied, nor do or permit anything to be done in or on the Premises
23 in a manner which would in any way (1) violate any of the terms of this Lease; (2) make
24 it difficult for either the City or the Tenant to obtain fire or other insurance required by this
25 Lease at standard rates; (3) cause or create a public or private nuisance in or on the
26 Premises or the City Dock; or (4) tend to impair or interfere with the character, reputation
27 or appearance of the Premises or the City Dock.

28 d. The Tenant shall not discharge or board passengers at the plaza located
29 at that portion of the City Dock closest to the Market House, commonly known as the end
30 of Ego Alley.

31 e. The Tenant may sell alcoholic beverages, non-alcoholic beverages, and/or
32 food to their customers or clients, as part of the purpose under this Lease; provided that
33 the Tenant first obtains all applicable licenses and permits to engage in such activity.

34 f. The City shall attempt to keep the Premises free and clear of unauthorized
35 vessels when the Vessels are away from the Premises, but the City shall be under no
36 obligation or responsibility to do so, nor shall the City assume or incur any liability for failing
37 to do so, and the Tenant hereby unconditionally and completely waives and releases all
38 complaints, claims, suits and actions of all types, both administrative and judicial, against
39 the City in connection therewith.

40 g. The City shall have the right to remove from the Premises, without any
41 liability whatsoever for so doing, and without prior or subsequent notice to the Tenant, any

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1 alterations made by the Tenant which are made without the consent required in Paragraph
2 11 of this Lease. The cost of removal and/or repairs associated with any such
3 unauthorized alterations, including any administrative costs incurred by the City, shall be
4 billed to the Tenant, and shall be due and payable by the Tenant as Additional Rent.

5 h. The Tenant shall conduct its business in and about the City Dock and the
6 Premises in an orderly manner, and shall keep the Vessels neat and clean and shall
7 maintain the area immediately adjacent to its mooring area on the Premises and the
8 Premises itself in a neat and clean manner.

9 i. Amplified music or other amplified sound on the Premises shall not exceed
10 the maximum decibel levels specified in Chapter 11.12 of the Code of the City of
11 Annapolis, as may be amended.

12 j. The Tenant shall not perform, or allow to be performed, any fueling or repair
13 work in the Annapolis Charter Dock or Harbor areas

14 k. The City's Harbormaster reserves the right to move either or both Vessels
15 located at the Premises by hand and line, with or without your presence, in case of
16 emergency.

17 l. The Tenant shall not keep any charter/vessel support vehicles in Susan
18 Campbell Park.

19 m. The Tenant shall comply with the Americans with Disabilities Act ("ADA")
20 during embarkation and debarkation of its customers, guests, invitees, participants, or
21 other attendees at the Premises.

22 n. The Tenant understands and agrees that the City's Harbormaster does not
23 provide line handlers, docking assistance or parking for any customers or guests related
24 to Premises usage.

25 o. The Tenant understands and agrees that the City's Harbormaster deals
26 only with the Tenant, or Tenant-designated operators, on issues related to dockage,
27 loading, parking or any other items related to the use of the Premises facilities, and the
28 Tenant shall not refer its customers to the City's Harbormaster.

29 p. The Tenant shall not be permitted to store any materials or personal
30 property, except for the Vessels and their contents, at the Premises or the City Dock area.

31 q. A dock box is not allowed to be used, kept, or stored on the Premises.

32 **8. City's Right to Temporary Use of the Premises.**

33 a. The City shall have the right and privilege not less than seven (7) calendar
34 days prior notice from the City to the Tenant to reclaim and use all or some of the Premises
35 in order to meet any contractual or legal obligations relating to prior leases of the City Dock
36 and any recorded encumbrances on the Premises. The City shall also have the right and
37 privilege, with the consent of the Tenant, which consent shall not be unreasonably
38 withheld, on not less than seven (7) calendar days prior notice from the City to the Tenant,
39 to reclaim and use all or some of the Premises in order to accommodate certain other

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1 special events, shows or programs conducted from time to time at or on the City Dock. In
2 such event, the Tenant shall vacate the designated portion of the Premises to which the
3 obligation or consent applies, and remove either or both Vessels from that designated
4 portion of the Premises during the period specified in the City's notice. The City and the
5 Tenant shall use best efforts to cooperate with one another to address both parties'
6 concerns regarding any such special event, show, or program, including the City's
7 Harbormaster determining whether an alternate location at City Dock is available during a
8 special event, show, or program.

9 b. The Tenant shall make reasonable good faith efforts to communicate and
10 cooperate with the City's Harbormaster regarding any periods of time other than
11 Paragraph 8(a) above when the Premises will be vacant, and the City's Harbormaster
12 shall have temporary use of all or a portion of the Premises during any such vacancies.

13 c. If the Tenant is required to vacate any portion of the Premises due to any
14 events, shows or programs, other than a contractual or legal obligation as described in
15 Paragraph 8(a) above, the Tenant shall be entitled to a pro rata abatement of the Rent
16 due pursuant to this Lease based on the ratio which the number of days of vacancy
17 specified in the City's notice bears to the total Rent, and based on the portion of the
18 Premises vacated.

19
20 **9. City Rights.**

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

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

32 c. The City's Harbormaster reserves the right to require the Tenant to immediately
33 move or relocate either or both Vessels to another area of the City Dock, or other City docking
34 facility, at any time due to exigent circumstances, in the City's Harbormaster's reasonable
35 discretion, which exigent circumstances may include but are not limited to, (1) compliance with
36 U.S. Coast Guard, Maryland Department of Natural Resources, or U.S. Customs directives, orders,
37 and/or requirements; (2) search and rescue operations; and (3) preparation for Force Majeure
38 Events, as defined herein, or other extreme weather or acts of God. The City's Harbormaster will
39 provide as much notice as reasonably possible to the Tenant if such relocation is necessary
40 pursuant to this subparagraph. The Tenant shall promptly acknowledge receipt of such notice.
41 Notice and acknowledgement shall be made via email, unless forty-eight (48) hours or less notice
42 is provided to Tenant, then, notice and acknowledgement shall be made via text message and email.

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1 d. The City's Harbormaster further reserves the right to require the Tenant to move
2 or relocate either or both Vessels to another area of the City Dock, or other City docking facility,
3 with at least forty-eight (48) hours' notice for a purpose integral to City harbor operations. The
4 Tenant shall promptly acknowledge receipt of such notice. Notice and acknowledgement shall be
5 made via text message and email.

6 **10. Tenant Equipment, Vessels, Personal Property.**

7 The Tenant shall retain ownership of all of its trade and business equipment, the
8 Vessels and personal property from time to time installed or located on the Premises. The
9 Tenant may remove any such fixtures, equipment or Vessels (subject to Paragraph 6 of
10 this Lease) at any such time during the Term, and shall remove all of it prior to the
11 expiration or earlier termination of this Lease. Removal shall not cause any damage to the
12 Premises or the City Dock.

13 **11. Repairs and Maintenance.**

14 a. The Tenant shall not make or cause to be made any alterations, additions,
15 or improvements to the Premises without obtaining the prior written consent of the City
16 that may be withheld in the City's sole and absolute discretion.

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

30 c. If the City is required to make any repairs to such portions of the Premises
31 by reason, in whole or in part, of the negligent or willful act or failure to act by the Tenant
32 or the Tenant's employees, agents, contractors, guests or invitees, the City may collect
33 the cost of any and all such repairs from the Tenant as Additional Rent.

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

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1 discretion, has addressed all other City streets, facilities, and areas that may need snow
2 removal.

3 e. The City shall have no liability to the Tenant by reason of any
4 inconvenience, annoyance, interruption, or injury to business or other use or occupancy
5 arising from making any repairs or changes that the City is required or permitted to make
6 in or to any portion of the Premises pursuant to this Lease or by law.

7 **12. Security, Property Loss Damage.**

8 a. The Tenant assumes all risks associated with the security of the Premises.
9 The City shall have no obligation or duty with regard to security. The Tenant shall police
10 and maintain the Premises in a clean, safe and secure manner.

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

25

26 **13. Default; Right to Cure; Termination.**

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

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1 a. If any representation or warranty, expressed or implied, of the Tenant and
2 pertaining to this Lease shall prove at any time to be incorrect or misleading in any material
3 respect either on the date when made or throughout the Term of this Lease; or

4 b. If the Tenant shall fail to comply, fail to fulfill, or otherwise violate any of the
5 terms, conditions, or obligations contained in this Lease; or

6 c. If the Tenant becomes insolvent or generally does not pay its debts as they
7 become due, or if a petition for relief is filed by the Tenant in a bankruptcy court, or if the
8 Tenant applies for, consents to, or acquiesces in the appointment of a trustee, custodian,
9 or receiver for the Tenant or any of its assets and property, or makes a general assignment
10 for the benefit of creditors, or in the absence of such application, consent, or
11 acquiescence, a trustee, custodian, or receiver is appointed for the Tenant or for a
12 substantial part of the assets and property of the Tenant and is not discharged within thirty
13 (30) calendar days; or

14 d. If any bankruptcy, reorganization, debt arrangement, or other proceeding
15 or case under any bankruptcy or insolvency or any dissolution or liquidation proceeding is
16 instituted against the Tenant and is consented to or acquiesced to by the Tenant or
17 remains for sixty (60) calendar days undismissed; or

18 e. If the Tenant loses or forfeits its corporate status, or ceases to be in good
19 standing with the State of Maryland.

20 **14. Force Majeure Event(s).**

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

34 b. In case of any loss of or damage to the Premises as the result a Force
35 Majeure Event, the City in its sole and absolute discretion may determine whether or not, and
36 to what extent, to repair or restore any of the Premises. If the City decides to repair or restore,
37 and any portion of the Premises remains suitable for the Tenant's use, then the Tenant shall
38 be entitled to utilize that portion of the Premises. If the City decides not to repair and restore
39 the Premises, then the Tenant may in its discretion elect to remain on the Premises under
40 the provisions of this Lease or to terminate this Lease, it being the Tenant's sole responsibility
41 to restore and/or repair such portions of the Premises as it may elect to undertake. If any
42 portion of the Premises is rendered unusable during the Term as a result of a Force

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1 Majeure Event, the Rent due and payable shall be reduced in direct proportion to the area
2 of the Premises rendered unusable. The Tenant shall present documentation including
3 measurements and calculations to support any claim of reduced Premises. In addition, the
4 Tenant shall be entitled to a credit against Rent for all reasonable and documented costs
5 in performing repairs to the Premises as a result of any such Force Majeure Event.

6 c. The City and the Tenant shall work cooperatively to determine possible
7 alternatives, solutions and/or remedies to any prevention, restriction, or delay that may
8 occur.

9 d. The City shall notify the Tenant within twenty-four (24) hours of the
10 occurrence of a Force Majeure Event and shall, as soon as possible thereafter, advise the
11 Tenant of a good faith estimate of the time that will be required before the delay is ended.

12 e. Notwithstanding the language herein, or any Force Majeure Event, or other
13 weather condition or wind speed, the Tenant shall not be entitled to (i) any pro-rated Rent
14 or (ii) change in Use Dates or Term if the Tenant is unable or unwilling to use the Premises
15 during the specified Use Dates or Term due to such Force Majeure Event, weather
16 condition, or wind speed.

17 **15. Signs.**

18 All signs that the Tenant desires to post on the Premises shall be approved in
19 writing and in advance by the City, the Historic Preservation Commission of the City of
20 Annapolis, and any other agency if required by law. The Tenant shall maintain any signs,
21 as may be approved by this Paragraph, and shall repair and replace when necessary to
22 keep in good condition and repair at all times. Any approved sign shall not be permanently
23 affixed or anchored to the sidewalk or street, and shall not obstruct pedestrian or vehicular
24 traffic or visibility, or adversely affect the safety of pedestrian or vehicular traffic. That sign
25 shall not have any animated, flashing, moving, or rotating components. That sign shall be
26 no larger than thirty-two square feet. Any damage caused by such sign shall be invoiced
27 to the Tenant as Additional Rent.

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

29 a. The Tenant, at its sole cost and expense, shall keep in force all licenses,
30 consents and permits necessary for the lawful use of the Premises for the purposes of this
31 Lease. The Tenant shall comply with all laws, regulations, ordinances and rules applicable
32 to the Premises and/or the Business, including, but not limited to, rules adopted by the
33 City's Harbormaster and/or the City Director of the Department of Recreation and Parks.
34 The Tenant, at its sole cost and expense, shall promptly comply with and do all things
35 required by any notice served upon it or upon the City in relation to the Premises or any
36 part thereof, from any of the departments or agencies of the City, a county, the State of
37 Maryland, or the United States, if the same shall be caused by the Tenant's use of the
38 Premises. The Tenant shall pay all costs, expenses, claims, fines, penalties, and damages
39 that may in any manner arise out of the failure of the Tenant to comply.

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

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1 c. The Tenant shall have a reasonable time to correct any violation under
2 Paragraph 16(a).

3 **17. Insurance; U.S. Coast Guard Inspection.**

4 a. The Tenant shall for the duration of this Lease maintain and pay the
5 premiums for a policy of insurance covering liability for personal injury and property
6 damage arising out of its business and operations pursuant to this Lease in the amount of
7 no less than One Million Dollars (\$1,000,000.00) per person for bodily injury and property
8 damage and Two Million Dollars (\$2,000,000.00) for each occurrence in the aggregate.

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

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

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

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

30 f. The obligations of the Tenant under this Paragraph 17 are part of but do
31 not limit or satisfy the Tenant's obligations under the remainder of this Lease.

32 g. As required by law, the Tenant shall obtain and maintain throughout the
33 Term of this Lease a valid and current United States Coast Guard certificate of inspection
34 for the Vessels to be used at the Premises, and shall provide a copy of such certificate(s)
35 to the City at the start of the Term and as often as may be requested by the City.

36 **18. Surrender of Premises.**

37 a. On the last day or earlier termination of this Lease, the Tenant shall vacate
38 the Premises and leave it in good condition and repair, normal wear and tear excepted. If
39 the Premises are not surrendered when required, the Tenant shall indemnify, defend and
40 hold the Indemnified Parties (as defined in Paragraph 12 of this Lease) harmless against
41 loss or liability resulting from the delay by the Tenant in vacating the Premises, including,

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

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

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

18 **19. Indemnification.**

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

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

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

42 **20. Impairment of the City's Title.**

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

9 **21. Immunities; Reservation of Governmental Authority.**

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

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

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

23 **22. Assignment.**

24 The Tenant shall not assign, transfer, or otherwise dispose of this Lease, except
25 that assignment or transfer of this Lease to a wholly owned subsidiary of the Tenant is
26 allowable.

27 **23. Independent Contractor.**

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

31 **24. Tenant's Representations.**

32 The Tenant hereby represents and warrants the following:

33 a. The Tenant is a limited liability company, duly formed and validly existing
34 under the laws of the State of Maryland and is qualified to do business and is in good
35 standing in the State of Maryland.

36 b. The Tenant has the power and authority to consummate the obligations
37 and responsibilities contemplated hereby, and has taken all necessary action to authorize
38 the execution, delivery and performance required under this Lease.

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1 **25. Notice.**

2 a. All notices pursuant to this Lease shall be by regular mail or email, except
3 notice of default or termination, which shall be by certified mail, return receipt requested,
4 and additionally except for notice related to the City's rights, which shall be as specified in
5 Paragraph 9(c) and 9(d).

6 b. Notice to the City shall be to the City's Harbormaster, 1 Dock Street,
7 Annapolis, Maryland 21401, harbormaster@annapolis.gov, 443-481-8311, with a copy to
8 City Attorney, 160 Duke of Gloucester Street, Annapolis, Maryland 21401,
9 cityattorney@annapolis.gov.

10 c. Notice to the Tenant shall be to Captain Stephen Funk, President &
11 CEO/USCG Licensed Master/ABYC, P.O. Box 178, Riva, Maryland 21140, Email
12 Address: captsteve@chesapeakeauticalcruises.com, Direct Text Phone Number: 410-
13 353-4850.

14 d. The parties shall timely advise each other in writing of any change of
15 address.

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

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

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

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

23 **27. Integration; Modification or Amendment.**

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

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

30 **28. Binding Effect.**

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

33 **29. Severability.**

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

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1 **30. Survival.**

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

4 **31. Authorization.**

5 This Lease is authorized by the Council of the City of Annapolis pursuant to O-__-
6 __.

7 **IN WITNESS WHEREOF**, it is the intent of the parties that the Tenant has signed
8 this Lease under seal and, further, that the parties have executed this Lease the day and
9 year first written above.

10
11 CRUISES, LLC

CHESAPEAKE NAUTICAL

12
13
14

15
16 _____

By:

17
18 (Seal)

Name:

19
20

Title:

21 ATTEST:

CITY OF ANNAPOLIS

22
23
24

25 _____
26 Regina C. Watkins-Eldridge, MMC,

By:

27 (Seal)
28 City Clerk

Gavin Buckley, Mayor

29
30

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

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34 _____
35 Office of Law
36 D. Michael Lyles, City Attorney

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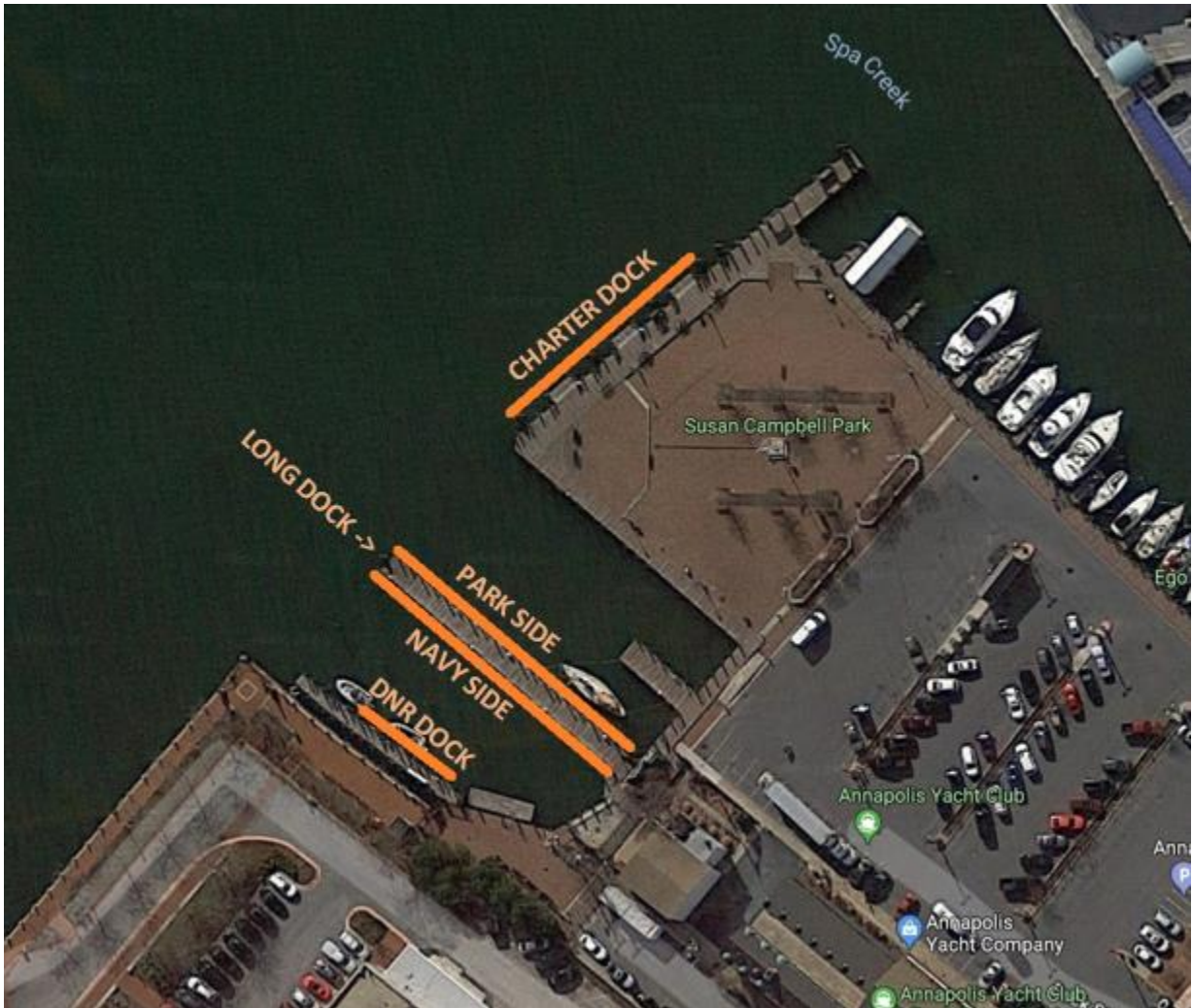
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**ATTACHMENT A
THE PREMISES**

Except as noted below, the docking space for the Premises shall consist of the Navy side of the Long Dock (i.e. Burtis Dock) for those applicable Use Dates, both commencing and ending at 12:00 PM (noon) for each of the applicable Use Dates.

The various docking space options available for the Premises are depicted in more detail in the image/drawing below.



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