



160 Duke of Gloucester Street
Annapolis, MD 21401

Signature Copy
O-31-16

..Title

Annapolis Maritime Museum Lease Agreement for Ellen O. Moyer Nature Park at Back Creek– For the purpose of approving the lease for certain City-owned property known as the Ellen O. Moyer Nature Park at Back Creek, Edgewood Road, Annapolis; and matters generally relating to said lease.

..Body

**CITY COUNCIL OF THE
City of Annapolis**

Ordinance 31-16

Introduced by: Mayor Pantelides

Referred to

Finance

Rules and City Government

AN ORDINANCE concerning

**Annapolis Maritime Museum Lease Agreement
for Ellen O. Moyer Nature Park at Back Creek**

FOR the purpose of approving the lease for certain City-owned property known as the Ellen O. Moyer Nature Park at Back Creek, Edgewood Road, Annapolis; and matters generally relating to said lease.

WHEREAS, the City of Annapolis is the fee simple owner of the property known as the Ellen O. Moyer Nature Park at Back Creek located on Edgewood Road in Annapolis, MD, and all improvements located thereon; and

WHEREAS, the Annapolis Maritime Museum, Inc. desires to lease portions of the aforementioned Property from the City to provide education programs, conduct public and private events, and other services, as further described in the attached Lease Agreement, and as more particularly described in Attachment A attached hereto and incorporated herein; and

WHEREAS, the City is willing to lease the space to the Annapolis Maritime Museum, Inc. for the purposes described and in accordance with the terms and conditions set forth in the Lease Agreement attached hereto and incorporated herein; and

WHEREAS, Article III, Section 8 of the Charter of the City of Annapolis requires the passage of an ordinance to authorize the lease; and

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

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

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

EXPLANATION

CAPITAL LETTERS indicate matter added to existing law.

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

Underlining indicates amendments

ADOPTED this 26th day of September, 2016.

Aye: 9 Mayor Pantelides, Alderman Budge, Alderman Paone,
Alderwoman Pindell Charles, Alderwoman Finlayson,
Alderman Littmann, Alderman Kirby,
Alderman Pfeiffer and Alderman Arnett.

THE ANNAPOLIS CITY
COUNCIL



Date:

10-10-2016

Michael J. Pantelides, Mayor

ATTEST



Date:

10/10/16

Regina Watkins-Eldridge, MMC,
City Clerk

CITY OF ANNAPOLIS LEASE AGREEMENT

THIS LEASE AGREEMENT is made as of this _____ day of _____, 2016 by and between **ANNAPOLIS MARITIME MUSEUM, INC.**, a Maryland corporation (the "Lessee") and the **CITY OF ANNAPOLIS**, a municipal corporation of the State of Maryland (the "Lessor").

WHEREAS, the Lessor owns the property known as the Ellen O. Moyer Nature Park at Back Creek located on Edgewood Road in Annapolis, MD, and all improvements located thereon (the "Property"); and

WHEREAS, the Lessee desires to lease portions of the aforementioned Property from the Lessor to provide education programs, conduct public and private events by the Lessee and licensed third parties and other services, as further described in this Lease Agreement; and

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

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

1. Leased Premises.

(a) Subject to Paragraphs 1(e) and 1(f) of this Lease Agreement, the Lessor does hereby lease to the Lessee that portion of the Property consisting of the Ellen O. Moyer Nature Park at Back Creek, including the "Waterworks Building" and the contiguous garage structure (collectively, the "Waterworks Building") and the dinghy dock, located on Edgewood Road, and all open space common areas and docking facilities situated, lying and being in the City of Annapolis, Maryland as further shown on Attachment A (collectively, the "Premises").

(b) The Lessee shall permit public access to the open space common areas of the Premises from sunrise to sunset, which shall be posted prominently on the Premises; provided however, that the Lessee shall have priority rights to the sole and exclusive use of the Premises and the authority to also grant temporary licenses to third parties for the use of any or all public areas on the Premises in accordance with the purposes of this Lease Agreement. Pursuant to that authority, the Lessee shall have the right to impose such reasonable regulations governing the use of the Premises' public areas by the public or any third person licensees, which to the extent practicable shall be consistent with the rules imposed on the public use of other Lessor parks. The Lessor reserves the right to request the Lessee to alter or change any rule enacted pursuant to this Paragraph, at any time, provided that the Lessor substantiates a reasonable justification for that request that does not conflict with the provisions of this Lease Agreement.

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

permits, deposits and fees and shall have the right to retain all such funds that it collects. Any fees collected by the Lessee under this Lease Agreement shall be used to defray the Lessee's operating costs.

(d) The Lessee shall also have the right to require a temporary license for use of the Premises by groups of twenty (20) or more persons and further condition such licenses on scheduling and other reasonable procedures, before and during the group's actual use of the Premises, which may include a requirement for payment of reasonable security deposits, insurance and specifications governing food vendors servicing that group.

(e) The Premises expressly shall not include that area of the Property consisting of a water tower and all related appurtenances and equipment, as further depicted on Attachment A.

(f) The Premises expressly shall not include that area of the Property at Edgewood Road/7090 Bembe Beach Road that the Lessor leases on an annual basis to the United States Sailboat Show, Inc. and the United States Powerboat Show, Inc., as further depicted on Attachment A.

2. Term.

(a) The Lessor leases to the Lessee and the Lessee hereby leases from the Lessor the Premises for a term commencing on the date of City Council approval and terminating on June 30, 2036 (the "Term"), unless terminated earlier in accordance with the terms of this Lease Agreement.

(b) This Lease Agreement may be extended on the same, or substantially similar, terms and conditions, in accordance with Paragraph 4 of this Lease Agreement. In the event any renewal materially changes the terms and conditions set forth herein, the approval of the City Council may be required

3. Use of Premises.

(a) The Lessee shall use and occupy the Premises for the sole purpose of operating the Ellen O. Moyer Nature Park at Back Creek to provide education programs, including, but not limited to, STEM and ecological components, community, Lessee and private events, to develop a living exhibit for the general public, and for any other purpose related to the Lessee's mission, as specified in its corporate and/or legal documents, or necessary to its sustained operations at the Premises.

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

(c) The Lessee shall not place or maintain any sign, billboard, marquee, awning, decoration, placard, lettering, advertising matter or other thing of any kind, whether permanent or temporary, on the exterior boundaries of the Premises without first obtaining the Lessor's written consent. The Lessee shall maintain any sign, billboard, marquee, awning, decoration, placard, lettering or advertising matter or other thing of any kind, as may be approved by the Lessor, and shall repair and replace when necessary to keep in good condition and repair at all times. The Lessor reserves the right to request the Lessee to remove any sign on the Premises, at any time, provided that the Lessor substantiates a reasonable justification for that request that is consistent with the provisions of this Lease Agreement.

4. Waiver of Rent; Annual Reviews and Reporting.

(a) In lieu of monetary rental payments, and expressly in addition to the requirements specified in Paragraph 5, the Lessee shall meet with the Lessor's City Manager, City Attorney and Director of the Recreation and Parks Department annually, at least thirty (30) calendar days prior to the end of then-current Lessor fiscal year (July 1st – June 30th) to establish written annual and/or multi-year advisory goals for the Lessee to achieve on the Premises for the subsequent Lessor fiscal year(s) (collectively, the "Advisory Goals"). The Advisory Goals for the Premises may include, but are not required to include, the following: creation of a "Park Master Plan"; collection of stakeholder/community input; renovation of the Waterworks Building; establishment of pocket gardens and habitats; installation of play areas for children (i.e. outdoor playgrounds that use only natural elements); incorporation of "Art in the Park" programs; collaboration with community partners; restoration or improvement of walking trails and picnic and shoreline areas; maintenance and cleaning of boardwalks; and/or invasive plant removal.

(b) No later than thirty (30) calendar days prior to the end of then-current Lessor fiscal year (July 1st – June 30th), the Lessee shall provide to the Lessor's Mayor City Council, City Manager and Director of the Recreation and Parks Department, c/o the City Attorney, 160 Duke of Gloucester Street, Annapolis, MD 21401, a written annual report (each an "Annual Report" and collectively the "Annual Reports"). Each Annual Report shall detail the Lessee's general progress on the Advisory Goals for the preceding Lessor fiscal year; explain any setbacks or other obstacles encountered in trying to achieve the Advisory Goals; describe any changes or improvements to the Premises; describe any other successes related to the Premises or the Advisory Goals; and address any citizen, stakeholder, or Lessor concerns related to this Lease Agreement. The Lessee's authorized agent or representative shall sign each Annual Report. If requested by the Lessor, the Lessee shall present such Annual Reports at a meeting or work session of the Lessor's City Council.

(c) In addition to the requirements in Paragraphs 4(a) and 4(b) above, no later than fifteen (15) calendar days prior to June 30, 2031, and in accordance with all of the requirements of this Paragraph 4, the parties shall determine in writing whether to extend this Lease Agreement, to terminate this Lease Agreement, or to continue through the expiration of the Term on June 30, 2036.

(d) Notwithstanding any other provision in this Paragraph 4, the Lessee shall have the right in its sole discretion to elect to extend this Lease Agreement for an additional ten (10) years beyond June 30, 2036 (i.e. June 30, 2046) **only if** all of the following requirements (the "Extension Requirements") are complied with no later than June 15, 2031 to the reasonable satisfaction of the Lessor:

(1) The Lessee shall have expended a sum between Two Hundred Fifty Thousand Dollars (\$250,000.00) to Five Hundred Thousand Dollars (\$500,000.00) Dollars toward architectural and related design fees, renovation costs, repair costs and/or other constructions costs for the Waterworks Building and/or other improvements pursuant to Paragraph 5 of this Lease Agreement.

(2) The Lessee shall have renovated the Waterworks Building to include classroom, lecture educational laboratory spaces and offices among other uses.

(3) The Lessee shall have renovated the Waterworks Building to remediate any and all mold, to repair any and all green roof leaks, to renovate and install new windows, and to establish gas, electricity, light, heat, power, water and sewer, and other services for this building; provided however, that it shall be a material obligation of the Lessor and a condition to the Lessee's performance of any or all of the requirements set forth in this Paragraph 4(d) that the Lessor shall have completely removed or caused the complete removal of those certain "artifacts" and all other materials stored in the Waterworks Building as of the effective date of this Agreement within one hundred eighty (180) calendar days of such effective date.

(4) The Lessee shall have obtained a use and occupancy permit, as well as any other permits required by law, for use of the Waterworks Building.

(5) The Lessee shall have complied with Paragraph 15(b) of this Lease Agreement for the Waterworks Building.

(e) If the Lessee fails to comply with all of the Extension Requirements to the reasonable satisfaction of the Lessor, then the Lessor shall have the right to either terminate this Lease Agreement on June 30, 2031 or to allow the Lessee to continue through the expiration of the Term. The Lessor's decision shall be specified in a written notice to the Lessee.

(f) Any extension and/or other material change to this Lease Agreement pursuant to this Paragraph 4 shall be documented in writing and signed by the authorized representatives of each of the parties hereto.

5. Improvements to the Premises and Grants.

(a) The Lessee shall, at its sole cost and expense, perform all improvements to the Premises, including all structure renovations and grounds revitalization, which are necessary for the operation of the Lessee's business, activities and education programs at the Premises, and obtain all appropriate licenses and permits required by law. The Lessee shall not materially expand, modify or make substantial improvements that alter the character or use of the Property as provided in this Lease Agreement and that require permitting and/or involve the critical area

or other governmental regulations, without the prior written consent of the Lessor, which consent shall not be unreasonably withheld. Any material improvements to the Premises undertaken by the Lessee shall be performed by contractors licensed, bonded and insured in the State of Maryland. The Lessee shall obtain all necessary permits to perform any improvements to the Premises. The Lessee agrees that all such improvements shall become the property of the Lessor upon expiration or earlier termination of this Lease Agreement, and further, that the Lessee shall be entitled to no reimbursement or re-payment for any such improvements.

(b) The Lessee shall, at a time to be determined by it, undertake, at its sole cost and expense, an assessment of the Waterworks Building on the Premises to determine the improvements and expenses that would be required for the Lessee to obtain all appropriate licenses and permits for the operation of its programs in such structures, including the construction and operation of an educational laboratory facility within either or both structures. Assuming in the Lessee's sole discretion that these structures can be rehabilitated and made suitable for its education program and other purposes and occupancy at a reasonable cost, and that the Lessee is able to secure the necessary funds to pay for such rehabilitation and use, the Lessee shall undertake to perform all such repairs and improvements as may be necessary to effect the rehabilitation of either or both structures, as the case may be, to make them suitable for the Lessee's education programs. The Lessee agrees that any and all architectural drawings and all similar and related work product generated for those improvements shall become the property of the Lessor when made, and that the Lessee shall be entitled to no reimbursement or re-payment for any such improvements.

(c) The Lessee and the Lessor shall cooperate with each other in the application for and in the expenditure of any applicable federal, state and local grant monies intended for the purpose of improving, maintaining or operating the Premises or intended for activities at the Premises.

(d) The Lessee, or any third party designated by the Lessee, may install stormwater improvements on the Premises with the prior written approval of the Lessor. The Lessee shall execute any additional documents or agreements, as deemed necessary by the Lessor, with regards to any such stormwater improvements. Further, as part of its right of entry pursuant to Paragraph 27, the Lessor shall be entitled at its sole expense to install, maintain and access stormwater improvements on the Premises, after not less than forty-eight (48) hours prior notice to the Lessee (except in the case of an emergency where no such notice is required). The Lessor shall use reasonable efforts to minimize interference to the Lessee's business or use of the Premises with regards to any stormwater improvements that the Lessor installs on the Premises. Any total maximum daily loads ("TMDL") or other stormwater credits related to any stormwater improvements on the Premises shall be credited to the Lessor, and neither the Lessee nor any other third party shall have any right to any such credits.

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

(a) Neither the Premises nor any portion of the Premises, nor this Lease Agreement, or any interest in it may be hypothecated or mortgaged by the Lessee, and any attempted

hypothecation or mortgaging of this Lease Agreement shall be of no force or effect, and shall confer no rights upon any mortgagee or pledgee.

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

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

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

(e) Except for the use of the Premises as authorized in Paragraph 1 and required in Paragraph 6(f), the Lessee shall not sublet any portion of the Premises without providing the Lessor with a copy of any proposed sublease agreement for the Lessor's written approval not later than thirty (30) calendar days prior to the effective date of any such sublease agreement. A failure by the Lessee to provide the Lessor with such notice and sublease agreement and obtain such approval as provided herein shall constitute a material breach of this Lease Agreement.

(f) The Lessee shall be required to sublease a specified area of the Premises to Annapolis Community Boating, Inc., subject to terms and conditions mutually agreed upon by those parties, as further depicted on Attachment A, and the Lessee shall provide the Lessor with a copy of the proposed sublease agreement for the Lessor's written approval not later than thirty (30) calendar days prior to the effective date of such sublease agreement.

7. Maintenance and Management of the Premises.

(a) The Lessor hereby designates the Lessee as the management entity for all aspects of use, operations and management of the Premises as a park, and the Lessee shall operate the Premises to the best of its ability, using both paid staff and volunteers.

(b) The Lessee shall be solely responsible for the maintenance of the Premises, subject to Paragraph 5(b) as it pertains to the Waterworks Building, and shall at its sole cost and expense, keep in good repair all improvements located thereon, including the interior and exterior of any structures on the Premises. The Lessee, at its sole cost and expense, shall provide routine structure cleaning and repairs, utility maintenance and repairs, all janitorial work, HVAC, plumbing, electric and related items. The Lessee shall be solely responsible for any annual costs of maintenance and service contracts for any structure/building systems, to include security, fire alarm, HVAC equipment, and lighting systems. In addition, the Lessee shall police and light such portions of Premises as may be appropriate, and maintain the Premises in a clean, safe and secure manner.

(c) The Lessor agrees to cut and maintain the grass areas located on the grounds of the Premises, in accordance with the mowing schedule for the Lessor's Recreation and Parks Department. The Lessor agrees to remove litter and to empty trash cans in the outdoor areas on the grounds of the Premises, in accordance with the litter/trash schedule for the Lessor's Recreation and Parks Department. The Lessor agrees to remove snow from the driveways and parking lots on the Premises, in accordance with the snow removal priority list for the Lessor's Recreation and Parks Department. The Lessor agrees to use reasonable efforts to patch and/or fill potholes in the parking lot of the Premises, expressly subject to the budgetary requirements and/or any priority list of the Lessor's Department of Public Works. The Lessor shall not be required to re-surface or re-pave any area of the Premises.

8. Telecommunications Build-Out.

The Lessee shall assume all costs and expenses related to any telecommunications build-out of the Premises, including but not limited to, telephone, telefax, computer, cable installation and/or satellite, it being understood by the parties that the Lessor shall have no obligation or duty with regard to same.

9. Utility Expenses.

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

10. Naming Rights.

In order to defray operating costs of the Premises, the Lessee may create naming rights for structures, pavilions and/or garden areas within the interior boundaries of the Premises, but the Lessee shall not take any action that would change the name of the Premises itself other than to refer to the Premises as the "Annapolis Maritime Museum Education Center" at the Ellen O. Moyer Nature Park.

11. Security.

(a) The Lessee hereby assumes and shall be solely responsible for all risks associated with the security of any structures and/or personal property located on the Premises, and with the Lessee's use of the Premises' docking facilities except as provided in such subleases described in Paragraph 6(f), it being understood and agreed by the parties that the Lessor shall have no obligation or duty with regard to same; provided, however, that the Lessor's Police Department agrees to continue patrolling the Property in accordance with its normal patrol procedures and routines.

(b) The Lessee shall not under any circumstances issue any no trespass notices, whether oral or written, or exclude any individual from the Premises for any reason, except pursuant to the provisions of Paragraph 1(b) herein, or to prevent a possible crime from being committed on the Premises in which case the Lessee shall timely notify the Lessor of such incident. If the Lessee desires to issue any no trespass notices or exclude any individual from the Premises, other than as permitted above, the Lessee shall send a written request to the Lessor and the Lessor shall make the ultimate decision how and if to act on this request.

12. Damage to the Premises-Force Majeure.

(a) In case of any substantial loss of or damage to the Premises as the result of fire, storm or other casualty or force majeure event, the Lessor in its sole and absolute discretion may determine whether or not, and to what extent, to repair or restore any of the Premises. If the Lessor decides to repair or restore, and any portion of the Premises remains suitable for the Lessee's use, then the Lessee shall be entitled to utilize that portion of the Premises. If the Lessor decides not to repair and restore the Premises, then Lessee may in its discretion elect to remain on the Premises under the provisions of this Lease Agreement or to terminate this Lease Agreement, it being the Lessee's sole responsibility to restore and/or repair such portions of the Premises as it may elect to undertake.

(b) It is further agreed that in the event that the Premises, any portion thereof or the Lessee's rights under this Lease Agreement are taken under the power of eminent domain, then the Lessee shall have the right to receive just compensation for the loss of the rights established under this Lease Agreement through a separate award, or failing that, which may be allocated from any amounts that the Lessor receives in such event.

13. Assumption of Risk; Lessee Indemnification.

(a) The Premises shall be leased in an "as is" condition, with all faults, and the Lessor makes no representation or warranty with regard to habitability or condition of the Premises or with regard to its suitability for any particular use. The Lessee has been informed that the Premises is subject to flooding and that such flooding may disrupt the Lessee's use and occupancy of the Premises and/or cause a risk of injury to persons and/or damage to personal property located on the Premises. The Lessee assumes the risk of any and all such disruptions, injuries and/or damage, and hereby waives any and all claims against the Lessor and, in their capacity as such, the officers, agents and employees thereof, from and against any and all claims, suits, actions, liability, judgments or damages for actual or alleged injury to persons, to the Premises or to other property (including loss of use of the Premises or other property whether or

not the Premises or such property is physically damaged or destroyed) in any way arising out of or through, or alleged to arise out of or through flooding of the Premises.

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

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

(d) The Lessor, in its sole discretion, may participate in handling its own defense or exclusively handle its own defense, and select its own attorneys, including the City Attorney.

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

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

14. Environmental Matters; Environmental Indemnification.

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

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

(2) "Hazardous Substances" shall mean any substances, chemicals, materials or elements that are defined as "hazardous" or "toxic" and regulated by any Environmental Legal Requirements; and shall also include, without limitation, any substance, chemical, material, or element (i) defined as a "hazardous substance" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42USC§§ 9601, et seq.), as amended by the Superfund Amendment and Reauthorization Act of 1986, and as further amended from time to time and regulations promulgated thereunder; (ii) defined as a "regulated substance" within the meaning of Subtitle I of the Resource Conservation and Recovery Act (42 USC §6991-6991(i)), as amended from time to time and regulations promulgated thereunder; (iii) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 USC §1321), or listed pursuant to Section 307 of the Clean Water Act (33 USC § 1317); (iv) defined as "hazardous," "toxic," or otherwise regulated under any Environmental Legal Requirements adopted by the state in which the Premises is located, or its agencies or political subdivisions; (v) which is petroleum, petroleum products or derivatives or constituents thereof; (vi) which is asbestos or asbestos-containing materials; (vii) the presence of which requires notification, investigation or remediation under any Environmental Legal Requirements; (viii) which is urea formaldehyde foam insulation or urea formaldehyde foam insulation-containing materials; (ix) which are polychlorinated biphenyls or polychlorinated biphenyl-containing materials; (x) which are radon or radon-containing or producing materials; or (xiii) which by any Environmental Legal Requirements require special handling in its collection, storage, treatment or disposal.

(b) Neither the Lessee nor the Lessor shall, in regard to this Lease Agreement, bring onto the Premises any Hazardous Substances.

(c) The Lessor and the Lessee shall each be liable for the consequences of, and responsible for proper removal and lawful disposal, at its sole expense, of any Hazardous Substances that they or their respective agents, employees, contractors, patrons, guests or representatives bring, brought or allow to be brought onto the Premises.

(d) Expressly subject to Paragraphs 14(b) and 14(c), the Lessee shall indemnify, defend and hold the Lessor, its elected officials, appointees, directors, employees, agents, and representatives harmless from and against all liability for injuries to persons, including death, and damage to the Premises arising from acts or omissions of the Lessee, its officers, agents, employees, contractors, patrons, volunteers, guests or invitees with respect to the existence of any Hazardous Substances on the Premises after the commencement of this Lease Agreement and/or any Environmental Legal Requirements for the Premises arising out of actions or inactions of the Lessee. The Lessee hereby acknowledges and agrees that such indemnity shall include any losses, costs, penalties, fines, damages, expenses, liability claims, suits, and/or demands of the United States and/or State of Maryland governments, including, but not limited to, the U.S. Environmental Protection Agency, the Maryland Department of the Environment and the Maryland Department of Natural Resources incurred by or made against the Lessor only if resulting from any negligent act or omission by the Lessee related to the existence of any Hazardous Substances on the Premises after the commencement of this Lease Agreement and/or any Environmental Legal Requirements for the Premises arising out of actions or inactions of the Lessee. Notwithstanding the foregoing, the Lessee shall not have any liability for the existence of

any Hazardous Substances that are or were present at the Premises prior to the commencement date of this Lease Agreement.

(e) To the extent permitted by the laws of the State of Maryland, existing appropriations, and/or available insurance coverage, and expressly subject to provisions of Section 5-301 *et seq.* of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland, as may be amended, also known as the Local Government Tort Claims Act, and except in the event of the Lessee's negligence or willful misconduct, and expressly subject to Paragraphs 14(b) and 14(c), the Lessor shall indemnify, defend and hold the Lessee, its officers, directors, employees, agents, and representatives harmless from and against all liability with respect to the existence of any Hazardous Substances on the Premises prior to the commencement of this Lease Agreement and any Environmental Legal Requirements for the Premises, not arising out of actions or inactions of the Lessee. The Lessor hereby acknowledges and agrees that such indemnity shall include any losses, costs, penalties, fines, damages, expenses, liability claims, suits, and/or demands of the United States and/or State of Maryland governments, including, but not limited to, the U.S. Environmental Protection Agency, the Maryland Department of the Environment and the Maryland Department of Natural Resources incurred by or made against the Lessor only if resulting from any negligent act or omission by the Lessor related to the existence of any Hazardous Substances on the Premises prior to the commencement of this Lease Agreement or any Environmental Legal Requirements for the Premises, not arising out of actions or inactions of the Lessee.

15. Insurance.

(a) As a part of the indemnification provided by the preceding Paragraph, but without limiting the foregoing, the Lessee shall file with the Lessor concurrent with the execution of this Lease Agreement, and at all times thereafter maintain in full force and effect at the Lessee's sole cost and expense, an acceptable policy or policies of liability insurance, including comprehensive general liability insurance. The policy or policies shall name as primary or additional insured the Lessor, and in their capacity as such, the officers, agents and employees thereof, and shall specify that the insured shall have no right of subrogation. Said policy(s) of insurance shall be in the minimum single limit amount of one million dollars (\$1,000,000.00) per person for any one claim and an aggregate limitation of three million dollars (\$3,000,000.00) for any number of claims arising from any one (1) incident. The insurance policy(s) shall insure against the types of liabilities covered by the indemnification and hold harmless provisions above.

(b) Within thirty (30) calendar days of completion of any rehabilitations and/or improvements pursuant to Paragraph 5 of this Lease Agreement, the Lessee shall either (1) demonstrate to the Lessor in writing that such rehabilitations and/or improvements were constructed in accordance with industry standard flood mitigation techniques or (2) apply for secure flood insurance from the Federal Emergency Management Agency National Flood Insurance Program in the minimum amount of Two Hundred Fifty Thousand Dollars (\$250,000.00).

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

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

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

16. Permits and Compliance with Laws.

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

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

(c) The Lessee shall have a reasonable time not to exceed ten (10) calendar days to respond to any notice pursuant to Paragraph 16(b), unless such violation relates to public safety, in which case the Lessor may order a temporary suspension of the Lessor's business and other operations pending compliance if otherwise authorized by law.

17. Removal of Personal Property.

(a) At the expiration or earlier termination of this Lease Agreement, the Lessee shall promptly remove, at its sole cost and expense, any and all personal property placed on the Premises by the Lessee or by other persons at the request or with the permission of the Lessee. Any such personal property not removed by the Lessee at the expiration of this Lease

Agreement, and the Lessee's continued failure to remove the same within thirty (30) calendar days after receipt of notice from the Lessor, shall be deemed abandoned and, at the election of the Lessor, shall become the property of the Lessor without payment of any kind to the Lessee, without increasing the Lessor's liability to the Lessee, and for any disposition of it as the Lessor decides to make. Any improvements made by the Lessee pursuant to this Lease Agreement shall remain on the Premises as property of the Lessor.

(b) If the Premises are not surrendered when required, the Lessee shall indemnify, defend and hold the Lessor, its elected officials, appointees, directors, employees, agents, and representatives harmless against loss or liability resulting from the delay by the Lessee in vacating the Premises, including, without limitation, any claims made by any succeeding tenant or other occupant founded on such delay. Any holding over with the consent of the Lessor after the termination or expiration of this Lease Agreement shall be construed to be a tenancy from month-to-month upon the same terms and conditions as provided in this Lease Agreement, to the extent applicable.

18. Default.

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

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

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

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

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

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

(b) Upon the occurrence of a Default, the Lessor shall, subject to and conditioned upon the Lessee's right to cure as set forth in Paragraph 18(d) below, proceed to terminate this Lease Agreement and the Lessee's right to possession of the Premises, and after compliance with the applicable legal process, re-enter and take possession of the Premises and remove the Lessee,

any occupant and any property therefrom, without being guilty of trespass or being liable to any suit, action or prosecution therefore, which liability the Lessee hereby expressly waives, and without relinquishing any rights of the Lessor against the Lessee. Notwithstanding such re-entry and termination of this Lease Agreement, the Lessee shall remain liable to the Lessor for any payments or damages due or sustained prior thereto.

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

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

19. Remedies Upon Default.

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

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

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

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

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

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

(6) The Lessor's uncontested and undivided rights to any and all improvements, rehabilitations and/or other maintenance undertaken, begun and/or completed by the Lessee pursuant to Paragraphs 5 and 7 of this Lease Agreement and all personal property abandoned pursuant to Paragraph 17(a) of this Lease Agreement, without reimbursement or repayment of any kind or nature to the Lessee.

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

20. Taxes and Assessments.

(a) The Lessee shall pay all impositions including all state, county and local taxes (including real estate ad valorem, sales, use, and occupancy taxes), and assessments of any kind and nature whatsoever for which the Lessee may be responsible under law, including all interest and penalties on them, which shall or may accrue or be incurred during the Term of this Lease Agreement. The Lessee shall pay all such taxes and assessments before any fine, penalty, interest, or cost may be added for nonpayment, and shall furnish to the Lessor, on request, official receipts or other satisfactory proof evidencing such payment. If any tax or assessment is payable in installments over a period of years, the Lessee shall be liable only for payment of those installments falling due and payable during the Term, with appropriate pro-ration in case of fractional years.

(b) Taxes and assessments shall not be deemed to include any municipal, state or federal income taxes assessed against the Lessor, or any municipal, state or federal capital levy, estate, succession, inheritance or transfer taxes of the Lessor, or any franchise taxes imposed on the Lessor, or any income, profits or revenues tax, assessment or charge imposed on any rent received as such by the Lessor under this Lease Agreement.

21. Reservation of Governmental Authority.

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

22. Benefit and Burden.

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

23. Governing Law.

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

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

24. Captions.

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

25. Entire Agreement.

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

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

26. Severability.

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

27. Right of Entry.

(a) The Lessor and its employees, representatives, agents, and servants, including any builder or contractor employed by the Lessor, shall have the absolute unconditional right at any and all reasonable times, after not less than forty-eight (48) hours prior notice to the Lessee (except in the case of an emergency where no such notice is required), to enter the Premises for any of the following purposes: (1) to inspect the Premises; (2) to access the Lessor-owned water tower, and all related appurtenances, on the Premises for inspection, monitoring, maintenance, construction and/or repair purposes; (3) to access any Lessor utilities, infrastructure, stormwater management devices, pipes, and all related appurtenances located on the Premises for inspection, monitoring, maintenance, construction and/or repair purposes; (4) in the case of a safety hazard or other emergency, to make such repairs and/or changes in the Premises as the Lessor may deem necessary and that the Lessee has failed to immediately initiate, the cost of which the Lessee shall reimburse within thirty (30) calendar days of the Lessor's invoice; or (5) to enforce and carry out any provision of this Lease Agreement.

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

28. Non-Discrimination.

(a) The Lessee shall not discriminate against any person with regard to membership policies, employment practices, or in the provision of or access to services based on race, color, religion, national origin, ancestry, sex, age, or disability.

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

29. Representations and Warranties.

The Lessee represents and warrants to the Lessor that:

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

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

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

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

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

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

30. Independent Contractor Status.

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

31. Recitals.

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

32. Survival.

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

33. Counterparts.

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

34. Notices.

Any and all notices required to be sent under this Lease Agreement shall be sent as follows:

Lessor: Director, Department of Recreation and Parks
273 Hilltop Lane
Annapolis, Maryland 21401

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

Lessee: ANNAPOLIS MARITIME MUSEUM, INC.
Chairman
P.O. Box 3088
Annapolis, Maryland 21403

35. Authorization: This Lease Agreement is authorized by Ordinance O-31-16.

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

WITNESS: ANNAPOLIS MARITIME MUSEUM, INC.

By: _____
Eric Rubin (Seal)
Chairman of the Board

ATTEST: CITY OF ANNAPOLIS

Regina C. Watkins-Eldridge, MMC,
City Clerk

By: _____
Michael J. Pantelides (Seal)
Mayor

REVIEWED AND APPROVED BY:

Thomas C. Andrews, City Manager

APPROVED FOR FINANCIAL SUFFICIENCY:

Bruce T. Miller, Director
Finance Department

REVIEWED AND APPROVED BY:





Michael Morris, Director
Department of Recreation and Parks

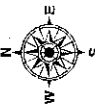
APPROVED FOR FORM AND LEGAL SUFFICIENCY:

OFFICE OF THE CITY ATTORNEY



Legend

-  Back Creek Nature Park Boundary
-  Annapolis Community Boating Area
-  Water Tower Area
-  Boat Show Area



Back Creek Nature Park Lease Boundaries

City of Annapolis MIT GIS

Map Created By: MIT GIS

Document Path: W:\ecandparks\backcreeklease\back_creek.mxd

Department Use: Public - Locations are approximate

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