



Legislation Text

File #: O-05-16, Version: 1

Lease of City Property: Spring 2018 Boat Shows - For the purpose of authorizing a lease of certain municipal property located at the City Dock, surrounding areas and boat moorings in Annapolis, Maryland as more fully described in the Lease Agreement with Cruisers University, Inc., t/a Annapolis Spring Sailboat Show, in April 2018, to conduct boat shows.

**CITY COUNCIL OF THE
City of Annapolis**

Ordinance 5-16

Introduced by: Mayor Pantelides and Alderman Budge

**Referred to:
Economic Matters Committee
Environmental Matters Committee
Finance Committee**

AN ORDINANCE concerning

Lease of City Property: Spring 2018 Boat Shows

FOR the purpose of authorizing a lease of certain municipal property located at the City Dock, surrounding areas and boat moorings in Annapolis, Maryland as more fully described in the Lease Agreement with Cruisers University, Inc., t/a Annapolis Spring Sailboat Show, in April 2018, to conduct boat shows.

WHEREAS, Cruisers University, Inc., t/a Annapolis Spring Sailboat Show, desires to lease certain municipal property for the purpose of conducting boat shows; and

WHEREAS, the Annapolis City Council believes that these proposed boat shows would inure to the benefit of the City; and

WHEREAS, a lease agreement setting forth details of the rental has been prepared and is considered satisfactory; and

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

NOW THEREFORE,

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the proposed lease between the City of Annapolis and Cruisers University, Inc., t/a Annapolis Spring Sailboat Show, for the rental of certain municipal property at the City Dock and other property and water

locations in Annapolis, Maryland during April 2018, specifically described in the Lease Agreement, a copy of which is attached hereto and made a part hereof, hereby approved and the Mayor is hereby authorized to execute the lease on behalf of the City of Annapolis.

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

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

EXPLANATION

CAPITAL LETTERS indicate matter added to existing law.

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

Underlining indicates amendments

CITY OF ANNAPOLIS BOAT SHOW LEASE AGREEMENT

(Spring 2018)

Authorized by O-5-16

THIS BOAT SHOW LEASE AGREEMENT (“Lease”) is made this _____ day of _____, 2016, by and between the City of Annapolis, a municipal corporation of the State of Maryland (the “Lessor”), and Cruisers University, Inc., a Maryland corporation, trading as Annapolis Spring Sailboat Show (collectively, the “Lessee”).

ARTICLE I

Section 1.1. Premises and Term:

(a) The Lessor hereby leases to the Lessee those parcels of land and water described below (collectively, the “Premises”), and as further designated on **Exhibit A** and **Exhibit A Supplement**, attached hereto and incorporated into this Lease. The Premises shall not include the sidewalk on Dock Street between Craig Street and the State-owned property at the end of Dock Street, which are to be left open for public access subject to the terms of this Lease.

- i. Water parcel from Charter Dock channel-ward into the Spa Creek moorings and the Susan C. Campbell Park from Monday, April 23, 2018 at 12:01 AM through Tuesday, May 1, 2018 at 5:00 PM.
- ii. (Optional) Ego Alley Parcel from Monday, April 23, 2018 at 5:00 PM through Monday, April 30, 2018 at 8:00 PM. The Lessee’s use of the Ego Alley Parcel shall be contingent on the Lessee obtaining a signed separate agreement with CMT (defined below) in which, during the period

specified in this subsection, CMT is permitted to use Slips 19 and 20 in exchange for the Lessee using sixty feet (60') of boardwalk currently leased to CMT. A copy of such separate agreement shall be provided to the Lessor.

- iii. (Optional) Donner Parking Lot Parcel from Tuesday, April 24, 2018 at 7:00 AM through Tuesday, May 1, 2018 at 5:00 PM. The Lessee's use of the Donner Parking Lot Parcel shall be contingent on whether the Lessee is able to use the Ego Alley Parcel, specified in Section 1.1(a)(ii) above.
- iv. (Optional) Newman Lot Parcel from Tuesday, April 24, 2018 at 7:00 AM through Tuesday, May 1, 2018 at 5:00 PM. The Lessee's use of the Newman Lot shall be contingent on the Lessee obtaining a signed letter of permission from or a separate agreement with the owners of this Parcel (110 Compromise Street), including the adjacent boardwalk and dock (formerly, "Chandler, LLC" and/or "Fawcett's") for use of this space. A copy of such letter of permission or separate agreement shall be provided to the Lessor.
- v. The State Dock Parcel (or the North Bulkhead City Dock Parcel) adjacent to Susan Campbell Park, from Tuesday, April 24, 2018 at 5:00 PM through Tuesday, May 1, 2018 at 5:00 PM loaned to the NSHOF (defined below) by the Lessor under the terms of a Memorandum of Understanding between the State of Maryland, Department of Natural Resources, the Lessor and the NSHOF dated November 18, 2005 as amended by Addendum dated October 23, 2006. The Lessee shall obtain a letter of permission from the NSHOF prior to using this Parcel. A copy of such letter of permission shall be provided to the Lessor.
- vi. PG Street Compound from Monday, April 23, 2018 at 12:01 AM through Tuesday, May 1, 2018 at 5:00 PM.

(b) Any separate agreement(s) and/or letter(s) of permission obtained pursuant to Section 1.1(a) of this Lease, as may be needed, shall be attached to this Lease as **Exhibit B** upon execution and completion. Such attachment may occur after full execution of this Lease.

(c) The Lessee shall only use the Premises for the purpose of holding a boat show (the "Show").

(d) The Lessee shall hold the Show on the Premises only during the dates and times described above in this Section 1.1 (collectively, the "Term").

(e) The Premises shall not be open to the public before 10:00 AM or after 6:30 PM during the Term of this Lease. This time restriction shall not apply to private events authorized by the Lessee.

Section 1.2. Rent:

(a) Except as may be adjusted by Sections 1.4 and/or 2.3 of this Lease, the "Rent" shall be the greater of either: (i) forty-five percent (45%) of the Lessee's gross receipts (after deduction of admission taxes) from the Lessee's sale of tickets for admission to the Show during the Term of this Lease (collectively, the "Ticket Sales") or, (ii) Fifteen Thousand Thirty-Seven Dollars and Nineteen Cents (\$15,037.19) (the "Minimum Payment").

(b) The Lessee shall pay the Lessor the Rent, in full, within thirty (30) calendar days of the close of

the Shows. If the Rent is based on the Ticket Sales, rather than the Minimum Payment, then the Rent shall be paid to the Lessor simultaneously with the Lessee's payment of its State of Maryland admissions tax. The Lessee shall also submit a copy of its Maryland State Admissions and Amusement tax report/return and such other proof of gross receipts from the Ticket Sales as may be reasonably requested by the Lessor's Director of Finance to: Director Department of Finance at 160 Duke of Gloucester Street, Annapolis, Maryland 21401. Copies of such payment and proof of gross receipts shall be provided to the Lessor's Harbormaster at 1 Dock Street, Annapolis, Maryland 21401.

Section 1.3. City Fees:

(a) In addition to the Rent, the Lessee and the Lessor shall meet sixty (60) calendar days before the opening of the Show governed by this Lease to determine the costs that will be incurred by the Lessor as a result of the Lessee's use of the Premises, including, but not limited to, utilities, inspections, parking and transportation, facilities and services, trash and recycling services, police services, fire services, and other safety services (collectively, the "City Fees"). The Lessee shall pay the Lessor the City Fees, in full, at the same time the Lessee pays the Rent. The Lessee may request the Lessor to provide reasonably sufficient documentation or other proof of such City Fees prior to any payment. If the Lessee disputes any City Fees, it may appeal such costs to the City Manager and/or his/her authorized designee for review and reconsideration.

(b) *Police Services:* In exchange for the City Fees, the Lessor shall provide police services related to traffic control outside the Premises, security for the Lessee's office within the Premises, and liaison with the Lessee's security guards inside the Premises.

(c) *Fire Services:* In exchange for the City Fees, the Lessor shall provide fire protection as required for the Show. Following the erection of all booths and other Show structures as described in Article VII of this Lease, but before the Show opens, the parties shall meet at the Premises to assure compliance with the Lessor's Fire Department regulations and accessibility of fire lanes and turning radius. No open flame devices or running of watercraft propulsion engines shall be permitted on the Premises during the open hours of the Show.

(d) *Utilities:* In exchange for the City Fees, the Lessor shall provide water and electricity as required for the Show. The Lessee, at its own expense, shall install all temporary electrical equipment, lines and devices required to provide power to the Premises in compliance with the National Electric Code.

(e) *Trash and Recycling:* In exchange for the City Fees, the Lessor shall provide an adequate number of trash and recycling dumpsters outside the Premises for the use by the Lessee during the Term of this Lease, and the Lessor shall also provide for the prompt removal of all trash, refuse and recycling materials deposited into these dumpsters during the Show. The Lessee, at its sole expense, shall provide an adequate and equal number of trash and recycling containers for its use within the Premises during the Term of this Lease, shall regularly empty such containers into the Lessor-provided dumpsters, and shall also provide for the prompt removal of all such containers from the Premises after the Show.

Section 1.4. Revisions to the Premises:

(a) The Lessor shall have the right to decrease the area of the Premises in order to reflect any change in ownership or infrastructure, provided written notice is furnished to the Lessee on or before November 1, 2017. In the event the total Premises area (measured in square feet) is reduced by any action of

the Lessor under this Section 1.4, the Rent due and payable shall be reduced in direct proportion to the reduction in total Premises area. The Lessee shall present documentation including measurements and calculations to support any claim of reduced Premises.

(b) The Lessee shall have the right to request to decrease the area of the Premises in order to reflect any change in the Shows, provided a written request is furnished to the Lessor on or before November 1, 2017. Any such change shall be subject to the Lessor's written approval, which approval shall not be unreasonably withheld. If such a decrease is approved by the Lessor, the Lessee shall be entitled to a pro rata reduction in the Rent, but only if the Rent is based on the Minimum Payment. The Lessee shall not be entitled to a reduction in the percentage of Ticket Sales due to the Lessor if the Rent is based on such Ticket Sales.

(c) Any increase in the area of the Premises requires an amendment to this Lease, signed by both parties.

ARTICLE II

Section 2.1. Number of Days: The Lessor grants to the Lessee the right to add one (1) day to the Show for general public admission. The Lessee shall also have the right, in its sole discretion, to reduce the number of days of the Show. The Lessee shall provide written notice of such intention no later than thirty (30) calendar days before the opening of the Show governed by this Lease.

Section 2.2. Dates of the Show: The Lessor grants to the Lessee the right to shift the dates of the Show and the Term of the Lease to exactly one (1) week earlier in that same calendar year (i.e. April 16, 2018 through April 24, 2018). The Lessee shall provide written notice of such intention no later than sixty (60) calendar days before the opening of the Show governed by this Lease.

Section 2.3. Adjustment to Rent: The Rent, but only if based on the Minimum Payment, and the City Fees shall be increased or reduced proportionately if the Lessee exercises its rights to extend or shorten the number of Show days pursuant to Section 2.1. All of the other provisions of the Lease shall remain in full force and effect.

ARTICLE III

Section 3.1. Use of the Premises:

(a) The Lessee is authorized to use existing and normal ingress to and egress from the Premises, and existing and normal street and harbor lighting, all without additional charge.

(b) Amplified music or other amplified sound on the Premises shall not exceed the maximum decibel levels specified in Chapter 11.12 of the City Code, as may be amended.

(c) The Lessee shall be prohibited from selling alcoholic and non-alcoholic beverages on the Premises during the Show.

(d) The Lessee shall submit to the Lessor an initial diagram of its proposed use of the Premises at least thirty (30) calendar days prior to the Show, and shall continue to submit updates of such diagram (as needed) up to the date of the opening of the Show. The Lessor shall obtain final Lessor approval of the final (updated) diagram prior to opening the Show, which approval shall not unreasonably be withheld or delayed.

Section 3.2. Pre-Show Meetings and Inspection: At no additional cost to the Lessee and prior to the opening of the Show, representatives of the Lessor's Department of Neighborhood and Environmental Programs, Police Department, Fire Department, Office of Emergency Management, Harbormaster, and Department of Public Works shall inspect the Premises and nearby areas with the Lessee's representative(s) to determine compliance with Lessor requirements, and for determination of the condition of the Premises. Written approval by representatives of these Lessor departments shall be required before the Lessee may open the Show. The opening of the Show shall not be delayed by any Lessor department whose representative is not present for this pre-inspection. The Lessor shall not refuse permission to open the Show or any part of the Show under this Section unless a threat to health or safety has been identified. The Lessor shall make every effort to limit that part of the Show not opened in the event of such threat, and to allow the Lessee to open the closed portion of the Show as soon as the threat is abated to the Lessor's satisfaction.

Section 3.3. Transportation: The Lessee shall prepare and submit a written "Transportation Plan" with a parking element to the Lessor's Director of Transportation at 308 Chinquapin Round Road, Annapolis, Maryland 21401, with a copy to the Lessor's Harbormaster at 1 Dock Street, Annapolis, Maryland 21401. The Transportation Plan shall address matters specified by the Lessor's Director of Transportation, and shall be submitted to that director no later than April 15, 2018. Except for public ways within the Premises, the Transportation Plan shall not provide for the closure of any street or restrict parking to only those associated with the Show. Moreover in publicizing the Show, the Lessee shall direct all persons attending the Show to park their vehicles at satellite lots and ride a shuttle to the site of the Show. Upon receipt of the Transportation Plan, the Lessor's Director of Transportation shall make copies available to all relevant agencies, including, but not limited to, those listed in Section 3.2, and to interested parties who have requested a copy.

ARTICLE IV

Section 4.1. Insurance: The Lessee, at its sole expense, shall obtain and keep in full force and effect comprehensive commercial general liability insurance of no less than Two Million Dollars (\$2,000,000.00) combined single limit, bodily injury and property damage, and Eight Million Dollars (\$8,000,000.00) umbrella policy, which shall be effective during the Lease's Term and the entire period of time during which the Lessee shall use or occupy the Premises or any part of the Premises.

Section 4.2. Additional Insured: The insurance policy or policies shall specifically name the "City of Annapolis, its elected officials, appointees, directors, employees, agents, contractors and representatives" as additional insureds, and insure against any and all loss, costs, damages, and expenses suffered by any person or to any property, including property owned by the Lessor, due to or alleged to be due to an act, omission or the negligence of the Lessee, its officers, agents, employees, vendors, subtenants or contractors, directly or indirectly, in connection with this Lease or the use of the Premises or any part of the Premises by the Lessee, its officers, agents, employees, vendors, subtenants or contractors.

Section 4.3. Insurer: The Lessee's insurer or insurers shall be authorized to write the required insurance, approved by the Insurance Commissioner of the State of Maryland, and subject to the approval of the Lessor's City Attorney. The form and substance of the Lessee's insurance policy or policies shall also be subject to reasonable approval by the Lessor's City Attorney, and shall be submitted to the City Attorney at 160 Duke of Gloucester Street, Annapolis, Maryland 21401, with a copy to the Lessor's Harbormaster at 1 Dock Street, Annapolis, Maryland 21401, for such approval not less than thirty (30) calendar days prior to the Lessee's occupancy of the Premises. The policy or policies of insurance shall then be secured by the Lessee and filed with the City Attorney not less than fifteen (15) calendar days prior to the Lessee's occupancy of the

Premises. No approvals pursuant to this Section 4.3 shall be unreasonably withheld or delayed.

Section 4.4. Notice: The certificate for each insurance policy or policies 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, 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's City Attorney, and that such notice shall be transmitted postage prepaid, return receipt requested.

Section 4.5. Lessee's Obligations: The obligations of the Lessee under this Article are part of but do not limit or satisfy the Lessee's obligations under the remainder of this Lease.

ARTICLE V

Section 5.1. Indemnity: The Lessee shall forever indemnify, defend and hold harmless the Lessor, its elected officials, appointees, directors, employees, agents, contractors and representatives, from and against any and all claims, suits, actions, judgments, and liability for loss, injury, damages and/or expenses suffered or alleged to have been suffered during the Lease's Term by any person or to any property due to or alleged to be due to an act, omission or the negligence of the Lessee, its officers, agents, employees, vendors, subtenants or contractors, directly or indirectly, in connection with this Lease or the use and occupancy of the Premises or any part of the Premises, by the Lessee, its officers, agents, employees, vendors, subtenants or contractors.

Section 5.2. Reimbursement: The Lessee shall reimburse the Lessor, within thirty (30) calendar days after demand for such reimbursement, for any damage done to the Lessor's buildings, facilities, equipment or property caused by an act, omission or the negligence of the Lessee, its officers, agents, employees, vendors, subtenants or contractors, during the Lease's Term or the Lessee's use and occupancy of the Premises or any part of the Premises. The Lessee may request the Lessor to provide reasonably sufficient documentation or other proof of such damage prior to any reimbursement. If the Lessee disputes any request for reimbursement, it may appeal such request to the City Manager and/or his/her authorized designee for review and reconsideration.

ARTICLE VI

Section 6.1. Security: The Lessee shall contract with and pay, as independent contractors, security guards from an agency duly licensed by the State of Maryland, in numbers sufficient to maintain security, peace and order at the Show inside the Premises during the entirety of the Lease's Term.

ARTICLE VII

Section 7.1. Interior Construction: The Lessee shall have the right to construct, install or erect seats, platforms, booths, tanks, scaffolding, rigging, floating piers, pilings, docks, catwalks, tents, exhibits, and any other apparatus or structure which the Lessee may deem necessary or desirable for the purpose of presenting the Show. The Lessee shall have the right to erect and construct a temporary fence so as to enclose the Premises in such a manner as to limit entry onto the Premises through controlled entrances. Such fence shall not contain barbed wire, razor wire or any similar materials.

Section 7.2. Exterior Construction: Wherever necessary to provide for pedestrian traffic, the Lessee shall erect and construct temporary wooden sidewalks outside of the Premises where the existing sidewalks are enclosed in the Premises by a temporary fence described in Section 7.1. All temporary sidewalks shall be

handicap accessible and illuminated during hours of darkness, and maintained by the Lessee in a safe and secure condition.

Section 7.3. ADA and Other Permits: The Lessee hereby assumes exclusive responsibility for compliance with any and all applicable provisions of the Americans with Disabilities Act of 1990 (ADA), as amended from time to time, at the Premises, during the entire time that the Lessee uses or occupies the Premises or any part of the Premises. Subject to the inspection provisions of Section 3.2 of this Lease, and to standard public safety and health approvals, any and all permits, licenses or authorizations required to be obtained from the Lessor by the Lessee during the Term of this Lease for the purpose of constructing or erecting the temporary structures described in this Article VII or for operating the Show, shall be deemed granted and issued upon the execution of this Lease by the Lessor and the Lessee. All other federal, state or county permits, which may be required, shall be the sole responsibility and expense of the Lessee.

ARTICLE VIII

Section 8.1. Cleanliness: The Lessee shall be responsible for keeping the Premises free of debris, trash and refuse, which shall be placed in the containers and the dumpsters specified in Section 1.3(e).

Section 8.2. Sanitation and Toilets: The Lessee shall, at its sole expense, provide adequate and sanitary toilet facilities throughout the Premises for use by the general public and others attending or participating in the Show, including sufficient ADA compliant sanitary toilet facilities.

Section 8.3. Trash, Recycling and Public Safety Cooperation: The parties shall cooperate with each other and use their best efforts to ensure that there is prompt trash and recycling removal, public safety protection, and adequate traffic control during the designated period of use and occupancy by the Lessee of the Premises.

ARTICLE IX

Section.9.1. Quiet Enjoyment: The Lessor covenants with the Lessee that at all times during the Term of this Lease, the Lessee shall peacefully hold and quietly enjoy the use and occupancy of the Premises without any disturbance or hindrance from the Lessor or from any other person claiming through the Lessor, except that the Lessor or others claiming through the Lessor may enter onto the Premises to effect necessary repairs to their own facilities as reasonably contemplated by the terms of this Lease, and to assure compliance with the terms of this Lease and all applicable laws. The Lessee shall cooperate with the Lessor to effect this access to the Premises.

ARTICLE X

Section 10.1. Condition of Premises after Show: Upon the expiration or earlier termination of this Lease, the Lessee, at its sole expense, shall return the Premises to the Lessor in the same or superior condition than received, natural wear and tear excepted.

Section 10.2. Lessee's Equipment after Show: Prior to the expiration or earlier termination of this Lease, the Lessee shall immediately remove all of its property, fixtures and chattels from the Premises. In the event that the Lessee, its officers, agents, employees, vendors, subtenants or contractors fail to remove any item of property, the Lessor reserves the right to remove and store any such property after the expiration or earlier termination of this Lease at the Lessee's sole expense, or as an alternative, to leave the property at the Premises.

In either case, the Lessor shall charge the Lessee a per diem rental for storage of such property. The Lessor shall bear no responsibility or liability for damage to or expense incurred as a result of property left, removed or stored under the provisions of this Section. The Lessee shall pay to the Lessor any expenses or charges due pursuant to this Section within thirty (30) calendar days after receipt of a bill from the Lessor.

Section 10.3. Post-Shows Inspection: Within ten (10) calendar days following the expiration or earlier termination of this Lease, the Lessee shall accompany the Lessor on a tour of the Premises to determine the condition of the Premises. Items corrected or repaired by the Lessor, and deemed by the Lessor to be the sole responsibility of the Lessee, shall be billed by the Lessor and paid by the Lessee within thirty (30) calendar days after receipt of such bill. The Lessee may request the Lessor to provide reasonably sufficient documentation or other proof of such items corrected or repaired by the Lessor prior to any payment. If the Lessee disputes any bill for an item corrected or repaired by the Lessor, it may appeal such bill to the City Manager and/or his/her authorized designee for review and reconsideration.

ARTICLE XI

Section 11.1. Remedies: All duties, liabilities and/or obligations imposed upon or assumed by the Lessee or the Lessor by or under this Lease shall be taken or construed as cumulative, and the mention of any specified duty, liability or obligation imposed upon or assumed by the Lessee or the Lessor under this Lease shall not be taken or construed as a limitation or restriction upon any or all of the other duties, liabilities, or obligations imposed upon or assumed by the Lessee or the Lessor under this Lease. The remedies provided for in this Lease shall be construed to be cumulative and in addition to any other remedies provided in law or equity which the Lessor or the Lessee would have in any case. In no case shall a waiver by either party of the right to seek relief under this provision constitute a waiver of any other or further violation. The remedies provided in this Lease shall not be deemed exclusive of other remedies not specified.

Section 11.2. Injunction: The Lessor shall have the right to seek and obtain in any court of competent jurisdiction an injunction, without the necessity of posting a bond, to restrain a violation or alleged violation by the Lessee of any term of this Lease, anything to the contrary notwithstanding.

ARTICLE XII

Section 12.1. Impossibility of Performance:

(a) Notwithstanding any other terms or provisions of this Lease, in the event the Lessor is temporarily or permanently prevented, restricted or delayed in the performance of any or all of the duties and obligations imposed upon or assumed by it hereunder, by act of the General Assembly of Maryland or the City Council of Annapolis, by a court of competent jurisdiction, by administrative delay not due to the fault of the Lessor (and its members and agents), or by an unforeseen event, not due to the fault of the Lessor (and its members and agents), including but not limited to fire, casualty, acts of God, strikes or other unforeseen occurrences which render impossible the fulfillment of this Lease, then the Lessor shall not be liable directly or indirectly for any claims caused to or suffered by the Lessee or any other person in connection with or as a result of such prevention, restriction or delay, and the Lessee shall not be liable for the payment of Rent for the Term of the Lease. However, if such prevention, restriction or delay relates to not more than five percent (5%) of the Term of the Lease, the Show shall still be held and the Rent (only if based on the Minimum Payment) shall be prorated to account for the number of scheduled hours the Show is not open to the public.

(b) The Lessee shall not be responsible for delays in the performance of any or all of the duties and obligations imposed upon or assumed by it hereunder caused solely by unforeseeable causes beyond its control or the control of its subcontractors or suppliers of materials, such as fire, casualty, acts of God, strikes, or other unforeseen occurrences. However, if such delay relates to not more than five percent (5%) of the Term of the Lease, the Show shall still be held and the Rent (only if based on the Minimum Payment) shall be prorated to account for the number of scheduled hours the Show is not open to the public.

(c) The Lessor and the Lessee shall work cooperatively to determine possible alternatives, solutions and/or remedies to any prevention, restriction, or delay that may occur.

ARTICLE XIII

Section 13.1. Payment: The Lessee shall make all payments due under this Lease by check, payable to the *City of Annapolis*. In addition to all other amounts due pursuant to this Lease, the Lessee shall pay the Lessor a monthly late fee of one and one-half percent (1.5%), or eighteen percent (18%) per annum, of any payment more than sixty (60) calendar days past due, until paid.

Section 13.2. Right to Audit: The Lessor shall have to right to receive and review a copy of the Lessee's Maryland State Admissions and Amusement tax report/return and any additional proof of gross receipts from the Ticket Sales as may be reasonably requested by the Lessor's Director of Finance to confirm that the Lessee has fulfilled its obligations under this Lease.

ARTICLE XIV

Section 14.1. Time is of the Essence: Time is of the essence in the performance of this Lease. Except as may be provided in this Lease or otherwise agreed to in writing by both parties, the times and deadlines specified in this Lease shall not be extended for any reason relating to the Term of the Lease and/or the installation or removal of equipment, materials, displays, or property from the Premises.

ARTICLE XV

Section 15.1. Assignment: The Lessee shall not assign, transfer, or otherwise dispose of this Lease without the prior written consent of the Lessor, but such consent shall not be unreasonably withheld or delayed. The foregoing shall not prevent the Lessee from subleasing portions of the Premises to Show exhibitors, provided the portion of the Premises subleased to any exhibitor does not exceed twenty-five percent (25%) of the total area of the Premises.

ARTICLE XVI

Section 16.1. Independent Contractor: The Lessee is an independent contractor and not the agent or employee of the Lessor. Under no circumstances shall this Lease be considered to create an employee or agency relationship or a partnership or joint venture between the parties.

ARTICLE XVII

Section 17.1. Liens: The Lessee hereby consents that the Lessor shall have a lien upon all property of the Lessee located from time to time upon the Premises for any and all unpaid charges which arise under this Lease. The Lessee hereby consents to and the Lessor shall have the power to impound and retain possession of

such property until all such charges and late fees due pursuant to this Lease have been paid, in full, to the satisfaction of the Lessor. In the event such charges remain unpaid ten (10) calendar days after the expiration or earlier termination of this Lease, the Lessor shall have the power to sell such property at public auction and apply the receipts from such auction to all such unpaid charges.

ARTICLE XVIII

Section 18.1. Compliance with all Laws: The Lessee shall comply with all laws, ordinances, and statutes applicable to the Premises or any part of the Premises, and the use and occupancy thereof, and to pay all taxes or charges imposed by law in connection with the Lessee's use and occupancy of the Premises. Provided the Lessee is making good faith progress towards correcting any violation under this Section, the Lessee shall have a reasonable time to correct that violation, not to exceed sixty (60) calendar days.

ARTICLE XIX

Section 19.1. Termination: In the event the Lessee should materially default in performance of its obligations under this Lease, and such default continues for more than thirty (30) calendar days after the Lessor has given written notice to the Lessee of such default, the Lessor shall have the right to immediately terminate the Lease and/or to pursue reimbursement from the Lessee for any damages to the Lessor resulting from the Lessee's material default of this Lease. For purposes of this Article XIX, "materially default" and/or "material default" shall mean one (1) or more of the following:

- (a) If any representation or warranty, expressed or implied, of the Lessee and pertaining to this Lease shall prove at any time to be incorrect or misleading in any material respect either on the date when made or throughout the Term of this Lease; or
- (b) If the Lessee shall fail to comply, fail to fulfill, or otherwise violate any of the terms, conditions, or obligations contained in this Lease; or
- (c) If the Lessee becomes insolvent or generally does not pay its debts as they become due, or if a petition for relief is filed by the Lessee in a bankruptcy court, or if the Lessee applies for, consents to, or acquiesces in the appointment of a trustee, custodian, or receiver for the Lessee or any of its assets and property, or makes a general assignment for the benefit of creditors, or in the absence of such application, consent, or acquiescence, a trustee, custodian, or receiver is appointed for the Lessee or for a substantial part of the assets and property of the Lessee and is not discharged within thirty (30) calendar days; or
- (d) If any bankruptcy, reorganization, debt arrangement, or other proceeding or case under any bankruptcy or insolvency or any dissolution or liquidation proceeding is instituted against the Lessee and is consented to or acquiesced to by the Lessee or remains for sixty (60) calendar days undismissed; or
- (e) If the Lessee loses or forfeits its corporate status, or ceases to be in good standing with the State of Maryland.

ARTICLE XX

Section 20.1. Immunities: Nothing in this Lease shall be interpreted or construed to waive, in whole or

in part, or to otherwise diminish, the Lessor's statutory, common law or other immunities in any action in tort, in contract or in any other form. The parties agree that if any duty assumed by the Lessor under the terms of this Lease or any action taken by the Lessor pursuant to any such term is construed to waive, in whole or in part, any such immunity, then the immunity shall nevertheless be fully restored, and shall bind and protect the parties as a contractual undertaking.

ARTICLE XXI

Section 21.1. Lessee's Representations: The Lessee hereby represents and warrants the following:

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

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

(c) The Lessee has obtained and shall continue to maintain, at its sole expense, such licenses and certifications as are necessary for the Show and as required pursuant to this Lease, and shall present such licenses or certifications to the Lessor upon its request.

ARTICLE XXII

Section 22.1 Authority: This Lease is authorized by Ordinance O-5-16 adopted by the City Council of the City of Annapolis.

ARTICLE XXIII

Section 23.1. Binding Effect: The terms of this Lease shall be binding on and enforceable against the parties and their respective successors and assigns.

Section 23.2. Governing Law: In all actions arising from this Lease, the laws of the State of Maryland shall govern, and the venue for all actions initiated pursuant to this Lease shall be exclusively the Courts of Anne Arundel County, Maryland. The parties waive jury trial in all actions initiated pursuant to this Lease.

Section 23.3. Severability: If any of the provisions of this Lease are declared by a court or other lawful authority to be unenforceable or invalid for any reason, the remaining provisions hereof shall not be affected thereby and shall remain enforceable to the full extent permitted by law.

Section 23.4. Survival: Those paragraphs in this Lease which by their nature are intended to survive shall survive the termination of this Lease.

Section 23.5. Notice: Any notice required to be delivered shall be sent to the following address and individual or such other address and/or such other individual as a party may identify in writing to the other party:

To the Lessor: Harbormaster
1 Dock Street
Annapolis, Maryland 21401

With a Copy to: City Attorney

160 Duke of Gloucester Street
Annapolis, Maryland 21401

To the Lessee: Paul Jacobs, President
Cruisers University, Inc. trading as
Annapolis Spring Sailboat Show
980 Awald Road | Suite 302
Annapolis, Maryland 21403

IN WITNESS WHEREOF, the Lessor, by and through its duly authorized agent, has caused this Lease to be executed on its behalf, and the Lessee, by and through its duly authorized agent, has duly executed this Lease on the date first written above. Witness the signatures and seals of the parties.

**Cruisers University, Inc. trading as
Annapolis Spring Sailboat Show**

Witness By: _____
Paul Jacobs, President (Seal)

ATTEST: **City of Annapolis, Maryland**

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

REVIEWED AND APPROVED BY:

Thomas Andrews, City Manager

APPROVED FOR FINANCIAL SUFFICIENCY:

Bruce T. Miller, Director
Finance Department

APPROVED FOR FORM AND LEGAL SUFFICIENCY:

Michael G. Leahy, City Attorney

**EXHIBIT A
THE PREMISES**

EXHIBIT A SUPPLEMENT

**EXHIBIT B
SEPARATE AGREEMENT(S) / LETTER(S) OF PERMISSION**

[Attach separate agreement(s) and/or letter(s) of permission,
as applicable and as completed].