



## Legislation Details (With Text)

**File #:** O-39-16      **Version:** 1      **Name:**

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**File created:** 8/19/2016      **In control:** City Council

**On agenda:** 10/10/2016      **Final action:** 10/24/2016

**Title:** Lease of City Property: Spring 2020 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 2020, to conduct boat shows.

**Sponsors:** Michael J. Pantelides, Joe Budge, Jared Littmann

**Indexes:** Economic Matters Committee, Environmental Matters Committee, Finance Committee

**Code sections:**

**Attachments:** 1. O-39-16 Boat Show Spring 2020 Ordinance and Lease.pdf, 2. O-39-16 EX A Spring 2020 Boat Show.pdf, 3. O-39-16 EX A Supplement Spring 2020 Boat Show.pdf, 4. O-39-16 Staff Report.pdf, 5. O-39-16 Fiscal Impact.pdf, 6. O-39-16 SIGNED.pdf

Date	Ver.	Action By	Action	Result
10/24/2016	1	City Council	adopt on second reader	Pass
10/18/2016	1	Environmental Matters Committee	recommend favorably	Pass
10/17/2016	1	Economic Matters Committee	recommend favorably	Pass
10/4/2016	1	Finance Committee	recommend favorably	Pass
9/26/2016	1	City Council	declare the public hearing closed	
9/12/2016	1	City Council	refer	
9/12/2016	1	City Council	refer	
9/12/2016	1	City Council	refer	

**Lease of City Property: Spring 2020 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 2020, to conduct boat shows.

### **CITY COUNCIL OF THE City of Annapolis**

### **Ordinance 39-16**

**Introduced by: Mayor Pantelides, Alderman Budge and Alderman Littmann**

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

**AN ORDINANCE** concerning

### **Lease of City Property: Spring 2020 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 2020, 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 2020, 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.

[brackets] indicate matter stricken from existing law.

Underlining indicates amendments

#### **CITY OF ANNAPOLIS BOAT SHOW LEASE AGREEMENT**

**(Spring 2020)**

Authorized by O-39-16

**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 (“Lessor”), and Cruisers University, Inc., a Maryland corporation, trading as Annapolis Spring Sailboat Show (collectively, “Lessee”).

## ARTICLE I

### Section 1.1. Premises and Term:

(a) Lessor hereby leases to 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 20, 2020 at 12:01 AM through Tuesday, April 28, 2020 at 5:00 PM.
- ii. (Optional) Ego Alley Parcel from Monday, April 20, 2020 at 5:00 PM through Monday, April 27, 2020 at 8:00 PM. Lessee shall accommodate water taxi docking space for Chesapeake Marine Tours, Inc. during the Term of this Agreement to replace the sixty feet (60’) docking space currently leased to CMT. Lessor shall use its best efforts to secure agreement with CMT that the water taxi docking space near the Harbormaster building shall be available for use by Lessee as provided herein; provided, however, if despite best efforts, the City is unable to obtain such agreement, then Lessee shall not be able to use this Ego Alley Parcel, but Lessee shall be entitled to a pro rata reduction in the Rent in direct proportion to the reduction in total Premises area.
- iii. (Optional) Donner Parking Lot Parcel from Tuesday, April 21, 2020 at 7:00 AM through Tuesday, April 28, 2020 at 5:00 PM. Lessee’s use of the Donner Parking Lot Parcel shall be contingent on whether 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 21, 2020 at 7:00 AM through Tuesday, April 28, 2020 at 5:00 PM. Lessee’s use of the Newman Lot shall be contingent on 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 Lessor.
- v. The State Dock Parcel (or the North Bulkhead City Dock Parcel) adjacent to Susan Campbell Park, from Tuesday, April 21, 2020 at 5:00 PM through Tuesday, April 28, 2020 at 5:00 PM loaned to the National Sailing Hall of Fame (“NSHOF”) by Lessor under the terms of a Memorandum of Understanding between the State of Maryland, Department of Natural Resources, Lessor and the NSHOF dated November 18, 2005 as amended by Addendum dated October 23, 2006.
- vi. PG Street Compound from Monday, April 20, 2020 at 12:01 AM through Tuesday, April 28, 2020 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) Lessee shall only use the Premises for the purpose of holding a boat show (the “Show”).

(d) Lessee shall hold the Show on the Premises only during the dates and times described above in this Section 1.1, as may be extended as set forth in this Lease (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 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) fifty percent (50%) of Lessee’s gross receipts (after deduction of admission taxes) from Lessee’s sale of tickets for admission to the Show during the Term of this Lease (collectively, the “Ticket Sales”) or, (ii) Fifteen Thousand Nine Hundred Fifty-Three Dollars and No Cents (\$15,953.00) (the “Minimum Payment”).

(b) Lessee shall pay 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 Lessor simultaneously with Lessee’s payment of its State of Maryland admissions tax. 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 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 Lessor’s Harbormaster at 1 Dock Street, Annapolis, Maryland 21401.

#### Section 1.3. City Fees:

(a) In addition to the Rent, Lessee shall reimburse Lessor the sum of Zero Dollars and No Cents (\$00.00) for the costs incurred by Lessor as a result of 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”). Lessee shall pay Lessor the City Fees, in full, at the same time Lessee pays the Rent.

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

(c) *Fire Services:* In exchange for the City Fees, 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 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, Lessor shall provide water and electricity as required for the Show. 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, Lessor shall provide an adequate number of trash and recycling dumpsters outside the Premises for the use by Lessee during the Term of this Lease, and Lessor shall also provide for the prompt removal of all trash, refuse and recycling materials deposited into these dumpsters during the Show. 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 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) 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 Lessee on or before November 1, 2019. In the event the total Premises area (measured in square feet) is reduced by any action of Lessor under this Section 1.4, the Rent due and payable shall be reduced in direct proportion to the reduction in total Premises area. Lessee shall present documentation including measurements and calculations to support any claim of reduced Premises.

(b) 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 Lessor on or before November 1, 2019. Any such change shall be subject to Lessor's written approval, which approval shall not be unreasonably withheld. If such a decrease is approved by Lessor, Lessee shall be entitled to a pro rata reduction in the Rent, but only if the Rent is based on the Minimum Payment. Lessee shall not be entitled to a reduction in the percentage of Ticket Sales due to 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: Lessor grants to Lessee the right to add one (1) day to the Show for general public admission. Lessee shall also have the right, in its sole discretion, to reduce the number of days of the Show. 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: Lessor grants to 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 13, 2020 through April 21, 2020). 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 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.

Section 2.4. Other Boat Shows: Excluding any lease to United States Sailboat Show, Inc. or United States Powerboat Show, Inc., Lessor shall not lease the Premises for the purpose of holding boat shows on the Premises from April 1<sup>st</sup> through November 1<sup>st</sup> in the year of 2020. Lessee may, within its sole discretion,

provide written authority to waive this restriction. This restriction shall be deemed to be automatically waived by Lessee in the event the Show is reduced to less than one (1) ten (10) hour day pursuant to Section 2.1.

### **ARTICLE III**

#### **Section 3.1. Use of the Premises:**

(a) 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) Lessee shall be prohibited from selling alcoholic beverages on the Premises during the Show.

(c) Lessee shall submit to 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. 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 Lessee and prior to the opening of the Show, representatives of 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 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 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. 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. Lessor shall make every effort to limit that part of the Show not opened in the event of such threat, and to allow Lessee to open the closed portion of the Show as soon as the threat is abated to Lessor's satisfaction.

**Section 3.3. Transportation:** Lessee shall prepare and submit a written "Transportation Plan" with a parking element to Lessor's Director of Transportation at 308 Chinquapin Round Road, Annapolis, Maryland 21401, with a copy to Lessor's Harbormaster at 1 Dock Street, Annapolis, Maryland 21401. The Transportation Plan shall address matters specified by Lessor's Director of Transportation, and shall be submitted to that director no later than April 15, 2020. 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, 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, 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:** 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 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 Lessor, due to or alleged to be due to an act, omission or the negligence of 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 Lessee, its officers, agents, employees, vendors, subtenants or contractors.

Section 4.3. Insurer: 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 Lessor’s City Attorney. The form and substance of Lessee’s insurance policy or policies shall also be subject to reasonable approval by 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 Lessor’s Harbormaster at 1 Dock Street, Annapolis, Maryland 21401, for such approval not less than thirty (30) calendar days prior to Lessee’s occupancy of the Premises. The policy or policies of insurance shall then be secured by Lessee and filed with the City Attorney not less than fifteen (15) calendar days prior to 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 Lessee or for any other reason, except after thirty (30) calendar days advance written notice mailed by the insurer or Lessee to 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 Lessee under this Article are part of but do not limit or satisfy Lessee’s obligations under the remainder of this Lease.

## **ARTICLE V**

Section 5.1. Indemnity: Lessee shall forever indemnify, defend and hold harmless 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 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 Lessee, its officers, agents, employees, vendors, subtenants or contractors.

Section 5.2. Reimbursement: Lessee shall reimburse Lessor, within thirty (30) calendar days after demand for such reimbursement, for any damage done to Lessor’s buildings, facilities, equipment or property caused by an act, omission or the negligence of Lessee, its officers, agents, employees, vendors, subtenants or contractors, during the Lease’s Term or Lessee’s use and occupancy of the Premises or any part of the Premises. Lessee may request Lessor to provide reasonably sufficient documentation or other proof of such damage prior to any reimbursement. If 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: 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: 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 Lessee may deem necessary or desirable for the purpose of presenting the Show. 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, 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 Lessee in a safe and secure condition.

Section 7.3. ADA and Other Permits: 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 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 Lessor by Lessee during the Term of this Lease for the purpose of constructing or erecting the temporary structures described in this Article VII and for operating the Show, shall be deemed granted and issued upon the execution of this Lease by Lessor and Lessee. All other federal, state or county permits, which may be required, shall be the sole responsibility and expense of Lessee.

## **ARTICLE VIII**

Section 8.1. Cleanliness: 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: 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 Lessee of the Premises.

## **ARTICLE IX**

Section.9.1. Quiet Enjoyment: Lessor covenants with Lessee that at all times during the Term of this Lease, Lessee shall peacefully hold and quietly enjoy the use and occupancy of the Premises without any disturbance or hindrance from Lessor or from any other person claiming through Lessor, except that Lessor or others claiming through 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. Lessee shall cooperate with 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, Lessee, at its sole expense, shall return the Premises to 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, Lessee shall immediately remove all of its property, fixtures and chattels from the Premises. In the event that Lessee, its officers, agents, employees, vendors, subtenants or contractors fail to remove any item of property, Lessor reserves the right to remove and store any such property after the expiration or earlier termination of this Lease at Lessee's sole expense, or as an alternative, to leave the property at the Premises. In either case, Lessor shall charge Lessee a per diem rental for storage of such property. 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. Lessee shall pay to Lessor any expenses or charges due pursuant to this Section within thirty (30) calendar days after receipt of a bill from Lessor.

Section 10.3. Post-Shows Inspection: Within ten (10) calendar days following the expiration or earlier termination of this Lease, Lessee shall accompany Lessor on a tour of the Premises to determine the condition of the Premises. Items corrected or repaired by Lessor, and deemed by Lessor to be the sole responsibility of Lessee, shall be billed by Lessor and paid by Lessee within thirty (30) calendar days after receipt of such bill. Lessee may request Lessor to provide reasonably sufficient documentation or other proof of such items corrected or repaired by Lessor prior to any payment. If Lessee disputes any bill for an item corrected or repaired by 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 Lessee or 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 Lessee or 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 Lessee or 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 Lessor or 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: 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 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 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 Lessor (and its members and agents), or by an unforeseen event, not due to the fault of 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 Lessor shall not be liable directly or indirectly for any claims caused to or suffered by Lessee or any other person in connection with or as a result of such prevention, restriction or delay, and 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) 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) Lessor and 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:** 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, Lessee shall pay Lessor a monthly late fee of one percent (1.0%), or twelve percent (12%) per annum, of any payment more than sixty (60) calendar days past due, until paid.

**Section 13.2. Right to Audit:** Lessor shall have to right to receive and review a copy of 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 Lessor's Director of Finance to confirm that 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:** Lessee shall not assign, transfer, or otherwise dispose of this Lease without the prior written consent of Lessor, but such consent shall not be unreasonably withheld or delayed. The foregoing shall not prevent 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:** Lessee is an independent contractor and not the agent or employee of 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:** Lessee hereby consents that Lessor shall have a lien upon all property of Lessee located from time to time upon the Premises for any and all unpaid charges which arise under this Lease which lien shall be subordinate to the lien of any mortgagee of Lessee; provided, however, that Lessee provides Lessor with at least thirty (30) calendar days prior written notice of such lien. Lessee hereby consents to and 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 Lessor. In the event such charges remain unpaid thirty (30) calendar days after the expiration or earlier termination of this Lease, 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:** 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 Lessee's use and occupancy of the Premises. Provided Lessee is making good faith progress towards correcting any violation under this Section, 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 Lessee should materially default in performance of its obligations under this Lease, and such default continues for more than thirty (30) calendar days after Lessor has given written notice to Lessee of such default, (except that if such default shall not be reasonably curable within thirty (30) calendar days, such thirty (30) calendar day period shall be extended for such time as is reasonably necessary to cure the default provided Lessee commences to cure the default within thirty (30) calendar days and diligently prosecutes the cure until completion) Lessor shall have the right to immediately terminate the Lease and/or to pursue reimbursement from Lessee for any damages to Lessor resulting from 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 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 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 Lessee shall fail to pay Rent and/or City Fees as required by the terms and conditions of this Lease; or
- (d) If Lessee loses or forfeits its corporate status, or ceases to be in good standing with the State of

Maryland.

Section 19.2. Other Leases: There are currently in effect leases between Lessor and Lessee for the Premises for boat shows for the years of 2016 through 2019. In the event Lessee should materially default in performance of its obligations in any one (1) of the above years, such material default shall also constitute a material default in the leases for all years subsequent to it, including this Lease. If the material default continues for more than thirty (30) calendar days after Lessor has given written notice to Lessee of such material default, Lessor shall have the right to terminate any of the leases for any one (1) or more of the years remaining in effect, including this Lease. Otherwise, execution of this Lease shall have no effect on those leases for the years of 2016 through 2019.

## **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, 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 Lessor under the terms of this Lease or any action taken by 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: Lessee hereby represents and warrants the following:

(a) 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) 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) 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 Lessor upon its request.

## **ARTICLE XXII**

Section 22.1 Authority: This Lease is authorized by Ordinance O-06-16 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 sections 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 Lessor:                      Director, Recreation & Parks Department  
273 Hilltop Lane  
Annapolis, Maryland 21403

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

To Lessee:                      Annapolis Boat Shows  
980 Awald Road, Suite 302  
Annapolis, Maryland 21403  
Attn: Paul Jacobs, President

With a Copy to:              Thomas J. Mulrenin, Esquire  
Yumkas, Vidmar, Sweeney & Mulrenin, LLC  
1919 West Street, Suite 200  
Annapolis, MD 21401

Section 23.6. Entire Agreement: This Lease constitutes the sole and entire agreement of the parties with respect to the subject matter of this Lease, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the subject matter. Neither party has relied on any statement, representation, warranty or agreement of the other party or of any other person on such party's behalf, including any representations, warranties, or agreements arising from statute or otherwise in law, except for the representations, warranties, or agreements expressly contained in this Lease.

Section 23.7. No Oral Amendments: No amendment to or rescission, termination, cancellation or discharge of this Lease is effective unless it is in writing, identified as an amendment to rescission, termination, cancellation or discharge of this Lease and signed by an authorized representative of each party to this Lease.

Section 23.8. No Peddlers, Hawkers, Itinerant Merchant License: A license for peddlers, hawkers, and itinerant merchants pursuant to Chapter 7.40 of the Annapolis City Code is not required to be obtained by Lessee during the Term of this Lease and/or for the purpose of the Show.

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

**LESSEE:**

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

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Paul Jacobs, President

ATTEST:

**LESSOR:  
City of Annapolis, Maryland**

\_\_\_\_\_  
Regina C. Watkins-Eldridge, MMC,  
City Clerk

By: \_\_\_\_\_  
Michael J. Pantelides  
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:

\_\_\_\_\_  
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].