

1 **CITY COUNCIL OF THE CITY OF ANNAPOLIS**

2
3 **ORDINANCE NO. O-09-09**

4
5 **Introduced by Mayor Moyer**

6
7 **Co-sponsored by Alderman Shropshire**
8 **Alderwoman Finlayson**
9 **Alderwoman Hoyle**
10 **Alderman Cordle**
11 **Alderman Israel**
12

LEGISLATIVE HISTORY			
First Reader:	Public Hearing:	Fiscal Impact Note:	120 Day Rule:
03/09/09	04/27/09	03/19/09	07/07/09
Referred to:	Meeting Date:	Action Taken:	
Economic Matters	04/28/09	Favorable	

13
14 **AN ORDINANCE** concerning

15
16 **Lease of City Dock Space to Chesapeake Marine Tours**

17
18 **FOR** the purpose of authorizing for fiscal year 2015 the lease of certain municipal
19 property located at the City Dock to Chesapeake Marine Tours, Inc., for the
20 docking and mooring of certain boats.

21
22 * * * * *

23
24 **WHEREAS,** the City of Annapolis and Chesapeake Marine Tours, Inc., have entered
25 into a series of leases and amendments, the most recent being O-03-08,
26 to lease through June 30, 2014, certain docking space at the City Dock at
27 specified rental and under certain terms and conditions; and

28
29 **WHEREAS,** Article III, Section 8 of the Charter of the City of Annapolis requires the
30 passage of an ordinance to authorize a lease.

31
32 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS**
33 **CITY COUNCIL** that the proposed Lease, a copy of which is attached hereto and made
34 a part hereof, between the City of Annapolis and Chesapeake Marine Tours, Inc. d/b/a
35 Watermark Cruises, is hereby approved, and the Mayor is hereby authorized to execute
36 the Lease on behalf of the City. It is further expressly found by the

1 City Council that the services to be provided as a result of the Lease will benefit visitors
2 and residents of the City, will generate tax revenues and additional rental income to the
3 City, and will better serve the public need for which the property was acquired.
4

5 **SECTION III: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
6 **ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its
7 passage.
8

9 **ADOPTED** this 11th day of May, 2009.

10
11 **ATTEST:**

THE ANNAPOLIS CITY COUNCIL

12
13
14
15 _____
16 **Regina C. Watkins-Eldridge, CMC**
17 **City Clerk**

BY: _____
ELLEN O. MOYER, MAYOR

18 **EXPLANATION:**

19 Highlighting indicates matter added to existing law.
20 ~~Strikeout indicates matter deleted from existing law.~~
21 Underlining indicates amendments.
22
23

LEASE

THIS LEASE, made this _____ day of _____, 2009, by and between the **CITY OF ANNAPOLIS**, Lessor, and **CHESAPEAKE MARINE TOURS, INC.**, Lessee.

WITNESSETH

WHEREAS, the parties have heretofore entered into a succession of leases beginning in 1972 for Lessee to dock its vessels and carry on its business at City Dock. The current lease, as amended, will expire June 30, 2014; and

WHEREAS, by this document the parties intend to extend Lessee's right to occupy the same dock spaces at City Dock on the terms and for the rent hereinafter set forth; and

WHEREAS, the Annapolis City Council has authorized this lease pursuant to O-9-09.

NOW, THEREFORE, in consideration of the rent reserved and the various agreements and covenants of the parties, they do agree as follows:

1. **Premises:** Lessor hereby rents and leases to Lessee, and Lessee hereby rents from Lessor for the term, at the rental and upon the condition covenants and agreements hereinafter set forth, the premises described as docking space at City Dock consisting of:

- a. The two end boat slips nearest the channel of Spa Creek known as Slips 21 and 22; and
- b. The end of the dock adjacent to Slip 22 between two dolphins for a distance of not more than eighty-four feet (84'); and
- c. Sixty feet (60') along the boardwalk adjacent to the Harbormaster's office.

2. **Term:** The term of this lease shall be for a period of one (1) year beginning July 1, 2014, and ending June 30, 2015, under the same terms and conditions.

3. **Rental:** Lessee agrees and covenants to take and hold the leased premises as Lessee for the term set forth and agrees to pay Lessor as rental the following sums:

a. As rental for the period July 1, 2014, through June 30, 2015, the sum of the rental for the period July 1, 2013 through June 30, 2014, as adjusted by the cost of living index change between December 31, 2012 and December 31, 2013 using the U. S. Bureau of Labor Statistics national average CPI-U. Actual annualized rent paid for the FY2009 was \$40,753.78.

b. For the same period Lessee shall also pay, as additional rent, for electricity, the sum paid for electricity for the period July 1, 2013 through June 30, 2014 likewise adjusted by the same COLA change as described above. Actual annualized electricity paid for FY 2009 was \$2,101.03.

1 c. For the same period Lessee shall also pay, as additional rent, for refuse
2 collection, the sum paid for refuse collection for the period July 1, 2013, through
3 June 30, 2014, likewise adjusted by the same COLA change as described above.
4 Actual refuse collection paid for FY 2009 was \$755.61.

5 d. Lessee shall also pay from time to time, as additional rent, all taxes and
6 other charges or fees required by law.

7 e. The yearly rent shall be calculated and billed by the City Department of
8 Finance not later than July 1st of each year and shall be due and payable by Lessee
9 thirty (30) days after receipt of said bill. All payments shall be made to the Department
10 of Finance.

11
12 4. **Purpose:** Lessee shall have authority to dock at the referenced docking spaces,
13 an office barge and the passenger vessels Harbor Queen, No. 539448; Annapolitan II,
14 No. 544467; Cabaret II, No. 1039051; Lady Sarah, No. 1160977; Miss Anne, No.
15 635636; Miss Anne II, No. 672686; Catherine Marie, No. 1082215; and four water taxi
16 launches for the purpose of operating a cruise and water taxi service on the
17 Chesapeake Bay and its tributaries. Lessee may replace any of the existing vessels,
18 provided the replacement vessels are of the same general size and use in the Coast
19 Guard certified passenger vessel service. Lessee agrees to use the referenced docking
20 spaces for passenger vessel, sightseeing, boat charter and water taxi operations and
21 for office space from which to conduct these operations.

22
23 5. **Time and Use:** Lessor covenants that Lessee's vessels shall have use of the
24 referenced docking spaces during the term of this Lease, subject to the terms and
25 conditions contained in this Lease.

26
27 6. **Lessor's Covenants:**

28 a. Lessor will attempt to keep the leased premises free and clear of
29 unauthorized vessels when Lessee's vessels are away from their berth, but shall be
30 under no obligation or responsibility to do so nor shall Lessor assume any liability for
31 failing to do so.

32 b. Lessor shall have the right to remove from the leased premises any
33 alterations made by the Lessee, its agents or employees, without the express consent
34 of the Harbormaster. The cost of removal and/or repairs associated with the removal of
35 any such unauthorized alterations, including any administrative costs incurred by the
36 Lessor, shall be billed to the Lessee, and shall be due and payable promptly upon
37 receipt by the Lessee.

38
39 7. **Lessee's Covenants:**

40 a. Lessee agrees that Lessor shall have the right and privilege, with the
41 consent of Lessee, which consent shall not be unreasonably withheld, on not less than
42 seven (7) days notice to the Lessee, to reclaim the leased premises, or any part thereof,
43 in order to accommodate certain special events, shows or programs conducted from
44 time to time on the City Dock, including prior contractual obligations of the Lessor, and
45 Lessee shall vacate the leased premises and remove all of its vessels from the leased

1 premises during any such period specified in the Lessor's notice. In the case of
2 Lessee's vacation of the leased premises due to either or both of the annual sailboat
3 and/or powerboat shows conducted on the City Dock, Lessee's consent is hereby given
4 for each year during the term of this Lease, and Lessee shall not be entitled to any
5 abatement of the rental hereunder. In the case of Lessee's vacation of the leased
6 premises due to any other events, shows or programs, Lessee shall be entitled to a pro
7 rata abatement of the rental hereunder, based on the ratio which the number of days of
8 vacancy specified in Lessor's notice to Lessee bears to the total annual rental, and
9 based on the portion of the premises vacated.

10 b. Lessee agrees to pay the rent reserved at the time payable. Lessee shall
11 be deemed to be in default of this covenant if, within ten (10) days of the due date, it
12 shall fail to pay the rent, the additional rent, or any other charges due under the terms of
13 this Lease. If Lessee shall default in the performance of any of the other covenants or
14 conditions contained in this Lease, and fails to cure or remedy any such defaults within
15 thirty (30) days after notice of such default is given in writing by the Lessor to the
16 Lessee, or if Lessee fails to pay the rental or additional rental reserved hereunder within
17 the time specified herein, then Lessee's right to possession hereunder shall thereupon,
18 at the option of the Lessor, cease and terminate, and the Lessor shall be entitled to the
19 possession of said premises and to re-enter without any further demand for rent or for
20 possession, and may forthwith proceed to recover possession by process of law without
21 any notice to quit or of intention to exercise such option, or to re-enter said premises, all
22 such notices being hereby expressly waived by Lessee.

23 c. That all signs desired to be erected by the Lessee must be approved by
24 the Lessor and the Historic Preservation Commission of the City of Annapolis and any
25 other agency if required by law.

26 d. Lessee agrees to conduct its business in and about the City Dock in an
27 orderly manner and to keep clean and neat its vessels and the area immediately
28 adjacent to its mooring area.

29 e. Lessee shall notify the Harbormaster whenever any of its vessels will be
30 absent from any portion of the leased space for more than seventy-two (72) hours,
31 during which time the Lessor may utilize any portion of the premises so vacated for any
32 lawful purpose whatsoever without any abatement of the rental hereunder. Whenever
33 Lessee vacates any portion of the leased space for more than seventy-two (72) hours, it
34 will be required to give the Harbormaster twenty-four (24) hours notice of the intended
35 return to the space vacated.

36 f. Lessee agrees not to discharge or board passengers at the plaza located
37 at that portion of the City Dock closest to the Markethouse commonly known as the end
38 of "Ego Alley."

39 g. Lessee shall comply with all federal, state and municipal licensing laws
40 and regulations to insure that the vessels and crews are certified as appropriate and
41 that its operations are operated in a safe and non-hazardous manner.

42 h. Lessee agrees that it will obtain liability insurance in the amount of One
43 Million Dollars (\$1,000,000.00) for bodily injury and Two Hundred Fifty Thousand
44 Dollars (\$250,000) for property damage for each occurrence of injury or damage arising
45 out of its operations at the City Dock. Lessee shall specifically name City of Annapolis

1 as an additional insured and a copy of any such insurance policy will be filed with the
2 City Clerk prior to occupancy hereunder. Lessee agrees to indemnify, defend, and hold
3 harmless the Lessor, its agents, officers, and employees, from all actions, causes of
4 action, claims or demands, and all liability arising through (or alleged to arise through)
5 any act, omission, fault, or negligence of the Lessee, its agents or employees, during
6 the term of this Lease.

7 i. This Lease may not be assigned or transferred by the Lessee without the
8 written authority of the Lessor, which consent shall not be unreasonably withheld.

9
10 8. **General Provisions:** The captions of the several paragraphs of this Lease are
11 inserted only as a matter of convenience and in no way define, limit, or describe the
12 scope of intent of such paragraph or of this Lease. The terms contained in this Lease
13 are intended to be binding upon and for the benefit of the parties, their heirs, legal
14 representatives, successors, and assigns.

15 ATTEST:

LESSOR:

Regina C. Watkins-Eldridge, CMC
City Clerk

Ellen O. Moyer, Mayor

ATTEST:

LESSEE:

CHESAPEAKE MARINE TOURS,
INC.

Debbie H. Gosselin, President

Approved as to form and legal sufficiency this _____ day of _____, 2009.

Steve Kling, City Attorney