

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

2
3 **ORDINANCE NO. O-35-08**

4
5 **Introduced by Mayor Moyer**

6
7 **Co-sponsored by Alderwoman Finlayson**
8 **Alderman Cordle**
9 **Alderwoman Hoyle**
10 **Alderman Paone**
11 **Alderman Shropshire**
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LEGISLATIVE HISTORY			
First Reader:	Public Hearing:	Fiscal Impact Note:	120 Day Rule:
09/22/08	11/24/08	11/20/08	01/20/09
Referred to:	Meeting Date:	Action Taken:	
Economic Matters			

15
16 **AN ORDINANCE** concerning

17
18 **Lease of City Property: Boat Shows in 2013 & 2014**

19
20 **FOR** the purpose of authorizing a lease of certain municipal property located in the
21 general harbor, Dock Street and Edgewood Road areas to United States Sailboat
22 Shows, Inc. and United States Powerboat Shows, Inc., bodies corporate, for a
23 certain period of time in October 2013 and October 2014, subject to certain
24 terms, provisions and conditions, for the purpose of conducting boat shows; and
25 all matters relating to said lease.

26 * * * * *

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28
29 **WHEREAS,** United States Sailboat Shows, Inc., and United States Powerboat Shows,
30 Inc., desire to lease certain municipal property for the purpose of
31 conducting boat shows; and

32
33 **WHEREAS,** the Annapolis City Council believes that these proposed boat shows would
34 inure to the benefit of the City; and

35
36 **WHEREAS,** a lease setting forth details of the rental has been prepared and is

LEASE AGREEMENT

Authorized by O-35-08

THIS AGREEMENT, made this _____ day of _____, 2009, by and between **THE CITY OF ANNAPOLIS**, a municipal corporation (hereinafter called "Lessor") on the one hand and the **UNITED STATES SAILBOAT SHOWS, INC.** and **UNITED STATES POWERBOAT SHOWS, INC.** (hereinafter jointly and severally called "Lessee").

Article I

Section 1.1. Premises and Term: Lessor hereby leases to Lessee, for the purpose of holding two boat shows, that property and water hereinafter called the "premises" described and shown on Exhibit A, (the sidewalk on Dock Street between Craig Street and the bulkhead at the Department of Natural Resources is not within the "premises" and is to be left open for public access), which is attached hereto and made a part hereof, for the periods of time hereinafter designated, subject to the provisions and terms of this agreement:

2013 – October 7 through October 22, inclusive

2014 – October 6 through October 21, inclusive

Section 1.2. Revisions to Premises: Lessor shall have the right to change the area of the premises from time to time in order to reflect any change in ownership or infrastructure. If the total area of the premises (exclusive of the Edgewood Road property) is reduced pursuant to this paragraph by five percent (5%) or more of the total area, Lessee shall be entitled to pro rata reduction in the Base Rent. If the total area of the premises is reduced pursuant to this paragraph by ten percent (10%) or more of the total area, Lessee shall have the right to pro rata reduction or to terminate the Lease. If Base Rent is determined using Ticket Sales Base Rent, then the reduction hereunder shall be calculated by reducing the fifty percent (50%) multiplier under Section 1.3(a) to reflect the area reduction (e.g. If the premises is reduced ten percent (10%) then Base Rent will equal: [50% x 90%] x gross ticket receipts). If the Base Rent is determined using Minimum Base Rent, then the reduction hereunder shall be determined using Minimum Base Rent, then the reduction hereunder shall be calculated by reducing the Base Rent by the percentage of the reduction of the total area. For purposes of this Section, the Edgewood Road property shall not be included in premises area calculations or in rent adjustments.

Section 1.3. Rent: Except as provided in Section 2.3, Base Rent shall be: (A) the greater of (i) 50% of Lessee's gross receipts (after deducting admission taxes) from the sale by Lessee of tickets for admission to the shows for that year (hereinafter "Ticket Sales Base Rent") or, (ii) Three Hundred Seventy-Five Thousand Nine Hundred Fifty Dollars (\$375,950.00) (hereinafter "Minimum Base

1 Rent"); plus (B) if the Edgewood Road property is used, Two Thousand Sixty
2 Dollars (\$2,060.00) each year used (hereinafter "Edgewood Road Rent"), Lessee
3 shall pay Lessor the Minimum Base Rent, in full, within thirty (30) days of the
4 close of the show. Any further monies over the Minimum Base Rent due to
5 Lessor as a result of ticket sales shall be paid by Lessee to Lessor
6 simultaneously with the payment of the State admissions tax. Proof of gross
7 receipts form ticket sales shall be supplied at that time to the City of Annapolis
8 Director of Finance in a form satisfactory to the said Director. In addition to the
9 Base rent, Lessee shall pay Lessor, Additional Rent equal to Twenty-Five
10 Thousand Seven Hundred Fifty Dollars (\$25,750.00) toward the costs incurred by
11 the City in providing electricity, water, inspections and public safety services to
12 the Boat Shows and in providing increased public services during the Shows.
13 Lessee shall pay Lessor the Additional Rent and (if applicable) Edgewood Road
14 rent, in full, at the time Lessee pays the Minimum Base Rent.

15
16 **Article II**

17 **Section 2.1. Number of Days:** Lessor grants to Lessee the right to add
18 one day at the end of either or both of the two boat shows for general public
19 admission. Lessee shall have the right, in its sole discretion, to reduce the
20 number of days of either or both of the boat shows.

21 **Section 2.2. Other Boat Shows:** Lessor covenants that it will not lease
22 the premises for the purpose of holding boat shows on the premises from June 1
23 through November 30 in each of the years of 2013 and 2014. Lessee may, within
24 its sole discretion, provide written authority to waive these restrictions. These
25 restrictions shall be deemed to be waived by Lessee automatically as to either
26 boat show (power or sail) reduced to less than one 10-hour day under Section
27 2.1.

28 **Section 2.3. Adjustment to Rent:** The Minimum Base Rent and
29 Additional Rent shall be increased or reduced proportionately, if Lessee
30 exercises its rights to extend or shorten the number of days pursuant to Section
31 2.1. Notice of any such extension or shortening shall be given by Lessee in
32 writing to Lessor by June 1 of the year in which the affected show is to be held.
33 All of the other provisions of the lease shall remain in full force and effect.

34
35 **Article III**

36 **Section 3.1. Facilities and Services:** Lessee shall have the use of the
37 following facilities and services without additional charge:

38 All that area indicated on Exhibit A (except as the area may be revised pursuant
39 to Paragraph 1.2 hereof), which is attached hereto and made a part hereof,
40 including Lessor's right and interest in the so-called "Fawcett's Lot", and all
41 related facilities including ingress and egress, existing and normal street and
42 harbor lighting, existing and normal electricity, water supply for said area, and
43 normal police and fire protection.

1 **Section 3.2. Police Services:** Lessor agrees to provide police services
2 related to traffic control outside the show, security for Boat Show office within the
3 show and liaison with Lessee's security guards inside the show without further
4 charge.

5 **Section 3.3. Fire Services:** Lessor agrees to provide fire protection as
6 required without further charge. Following the erection of all booths and other
7 show structures as described under Section 7.1 hereof but before the show
8 opens, the parties shall meet at the premises to assure compliance with Fire
9 Department regulations and accessibility of fire lanes and turning radius. No
10 open flame devices or running of watercraft propulsion engines shall be
11 permitted on the demised premises during the open hours of the shows.

12 **Section 3.4. Utilities:** Lessor shall provide water and electricity without
13 further charge. Lessee at its own expense shall install all temporary electrical
14 equipment, lines and devices required to provide power to the premises in
15 compliance with National Electric Code. Lessee shall be responsible for refuse
16 removal as provided under Section 8.1 hereof.

17 **Section 3.5. Parking and Transportation:** The Lessee shall coordinate
18 all plans for the provision of any intra-city mode of transportation during the
19 course of the boat shows with the City of Annapolis Department of
20 Transportation. Lessee shall furnish to Lessor a transportation plan including a
21 parking element.

22 **Section 3.6. Pre-Show Meetings and Inspection:** Prior to the opening of
23 each show, representatives of the Department of Neighborhood and
24 Environmental Programs, Annapolis Police Department, Annapolis Fire
25 Department, Harbormaster, and Annapolis Department of Public Works shall
26 inspect the premises and nearby areas with Lessee's representative to determine
27 compliance with City requirements and for determination of the condition of City
28 property to be leased. Written approval by representatives of all these
29 departments is required before Lessee may open the show. The opening of the
30 show shall not be delayed by any department whose representative is not
31 present for said inspection. Lessor shall not refuse permission to open the show
32 or any part of the show under this paragraph unless a threat to health or safety
33 has been identified. Lessor shall make every effort to limit that part of the show
34 not opened in the event of such threat and to allow Lessee to open the closed
35 portion of the show as soon as the threat is abated to Lessor's satisfaction. All
36 other federal, state or county permits which may be required shall be the
37 responsibility of the Lessee.

38 **Section 3.7. Transportation:** The Lessee shall prepare and submit to the
39 Director of Transportation a Transportation Plan with a Parking Element. The
40 Plan shall address matters specified by the Director and shall be submitted no
41 later than August 15 of each year for which the premises are leased. Except for
42 public ways within the leased premises, the Plan shall not provide for the closure
43 of any street or restrict parking to those associated with the boat shows.

1 Moreover in publicizing the boat shows, the Lessee will direct all persons
2 attending the event to park their vehicles at satellite lots and ride the shuttle to
3 the site of the boat shows. Upon receipt of the Plan, the Director shall make
4 copies available to relevant agencies and to interested parties who have
5 requested a copy.

6
7 **Article IV**

8 **Section 4.1. Insurance:** Lessee shall, at its own expense, obtain and
9 keep in full force and effect comprehensive commercial general liability insurance
10 of no less than Two Million Dollars (\$2,000,000.00) combined single limit, bodily
11 injury and property damage; and Eight Million Dollars (\$8,000,000.00) umbrella
12 policy; which shall be effective during the entire period of time during which the
13 Lessee shall use or occupy the premises, or any part thereof.

14 Such insurance policy shall specifically name the City of Annapolis, and in their
15 capacity as such, the officers, agents and employees thereof, as additionally
16 insured, and insure against any and all loss, costs, damages, and expenses
17 suffered by any person, or to any property, including property owned by Lessor,
18 due to or alleged to be due to: an act, omission or the negligence of Lessee, its
19 officers, agents, employees, vendors, subtenants or contractors; or directly or
20 indirectly to the use of the premises, or any part thereof by Lessee, its officers,
21 agents, employees, vendors, subtenants or contractors.

22 The insurer or insurers of the policy or policies referred to in the preceding
23 paragraph shall be: authorized to write the required insurance; approved by the
24 Insurance Commissioner of the State of Maryland; and subject to the reasonable
25 approval of the City Attorney of Annapolis. The form and substance of the policy
26 or policies of insurance shall also be subject to reasonable approval by the City
27 Attorney of the City of Annapolis, and shall be submitted to the City Attorney for
28 such approval not less than thirty (30) days prior to Lessee's occupancy of the
29 premises. Said policy or policies of insurance shall then be secured by Lessee
30 and filed with the City Attorney of the City of Annapolis not less than fifteen (15)
31 days prior to Lessee's occupancy of the premises. Said approvals shall not be
32 unreasonably withheld.

33 The Certificate for each such insurance policy shall contain a statement on its
34 face that the insurer will not cancel the policy or fail to renew the policy, whether
35 for nonpayment of premium, or otherwise, and whether at the request of Lessee
36 or for any other reason, except after thirty (30) calendar days advance written
37 notice mailed by the insurer to the City Attorney of the City of Annapolis and that
38 such notice shall be transmitted postage prepaid, with return receipt requested.

39 The obligations of Lessee under this Article are part of but do not limit or satisfy
40 Lessee's obligations under Article V.

41
42 **Article V**

43 **Section 5.1. Indemnity:** Lessee agrees that it shall forever indemnify,

1 defend and hold harmless the Lessor, its officers, agents, employees, from and
2 against any and all claims, suits, actions, judgments, and liability for loss, injury,
3 damages and/or expenses suffered or alleged to have been suffered by any
4 person or to any property due to or alleged to be due to: an act, omission or the
5 negligence of Lessee, its officers, agents, employees, vendors, subtenants or
6 contractors; or directly or indirectly the use of the leased premises, or any part
7 thereof, by Lessee, its officers, agents, employees, vendors, subtenants or
8 contractors.

9 Lessee agrees to reimburse Lessor, within thirty (30) days after demand for such
10 reimbursement, for any damage done to Lessor's buildings, facilities, equipment
11 or property caused by an act, omission or the negligence of Lessee, its officers,
12 agents, employees, vendors, subtenants or contractors during Lessee's use and
13 occupancy of the leased premises or any part thereof.
14

15 **Article VI**

16 **Section 6.1.** Security: Lessee shall contract with and pay, as independent
17 contractors, security guards from an agency duly licensed by the State of
18 Maryland, in numbers sufficient to maintain security, peace and order at the boat
19 shows inside the premises during the lease term.
20

21 **Article VII**

22 **Section 7.1. Interior Construction:** Lessee shall have the right to
23 construct, install or erect seats, platforms, booths, tanks, scaffolding, rigging,
24 floating piers, pilings, docks, catwalks, tents, exhibits, and any other apparatus or
25 structure which Lessee may deem necessary or desirable for the purpose of
26 presenting the boat shows. In addition, the Lessee shall have the right to erect
27 and construct a temporary fence so as to enclose the premises in such a manner
28 as to limit entry onto the premises through controlled entrances. Such fence shall
29 not contain barbed wire, razor wire or any similar materials.

30 **Section 7.2. Exterior Construction:** Lessee agrees to erect and
31 construct temporary wooden sidewalks, wherever necessary to provide for
32 pedestrian traffic, outside of the leased premises where the existing sidewalks
33 are enclosed in the premises by said temporary fence described in Section 7.1.
34 Said walks shall be handicap accessible and illuminated during the hours of
35 darkness and maintained by Lessee in a safe and secure condition.

36 **Section 7.3. ADA and Other Permits:** Lessee hereby assumes exclusive
37 responsibility for compliance with any and all applicable provisions of the
38 Americans with Disabilities Act of 1990, as amended from time to time at the
39 demised premises, during the entire time Lessee uses or occupies those
40 premises, or any part thereof, pursuant to this Lease Agreement. Subject to the
41 inspection provisions of Section 3.7 and to standard public safety and health
42 approvals, any and all permit, license or authorization required to be obtained
43 from the City or any agency thereof by the Lessee during the term of this Lease

1 for the purpose of constructing or erecting the temporary structures described in
2 Sections 7.1 and 7.2 above or for operating the shows, shall be deemed granted
3 and issued upon the execution of this Lease by the Lessor and Lessee. All other
4 federal, state or county permits, which may be required, shall be the
5 responsibility of the Lessee.

6
7 **Article VIII**

8 **Section 8.1. Trash:** Lessee, at its own expense, shall provide an
9 adequate number of trash containers for its use within the show grounds during
10 the entire occupancy period of the premises and shall provide for the prompt
11 removal of said containers, trash and refuse. Lessor, at its own expense, shall
12 provide an adequate number of trash dumpsters outside the show grounds for
13 the use of Lessee during the occupancy period and shall provide for the prompt
14 removal of trash and refuse in these dumpsters.

15 **Section 8.2. Cleanliness:** Lessee shall be responsible for keeping the
16 premises free of debris, trash and refuse and shall place the same in dumpsters
17 or receptacles.

18 **Section 8.3. Sanitation and Toilets:** Lessee shall, at its own expense,
19 provide adequate and sanitary toilet facilities throughout the demised premises
20 for use by the general public and others attending or participating in the boat
21 shows.

22
23 **Article IX**

24 **Section.9.1. Quiet Enjoyment:** Lessor covenants with Lessee that at all
25 times during the term of this Lease Agreement, Lessee shall peacefully hold and
26 quietly enjoy the demised premises without any disturbance or hindrance from
27 Lessor or from any other person claiming through Lessor, except that the City or
28 others claiming through the Lessor, may enter onto the demised premises to
29 effect necessary repairs to their own facilities as reasonably contemplated by the
30 terms of this Agreement and to assure compliance with the terms of this
31 Agreement. Lessee shall cooperate with the Lessor to effect this access to the
32 demised premises.

33 **Section 9.2. Trash and Public Safety Cooperation:** The parties agree to
34 cooperate with each other and use their best efforts to ensure that there is
35 prompt trash removal, public safety protection and adequate traffic control during
36 the designated period of occupancy by the Lessee of the premises.

37
38 **Article X**

39 **Section 10.1. Condition of Premises After Show:** Following the
40 occupancy period, the Lessee, at Lessee's sole expense, shall return the
41 premises in the same or superior condition than received, natural wear and tear
42 excepted.

43 **Section 10.2. Lessee's Equipment After Show:** Prior to the expiration of

1 the lease term, Lessee shall immediately remove all of its property, fixtures and
2 chattels from the leased premises. In the event that Lessee, its officers, agents,
3 employees, vendors, subtenants or contractors fail to remove any item of
4 property, Lessor reserves the right to remove and store any such property after
5 the expiration or termination of the lease term at Lessee's expense or as an
6 alternative, to leave the property at the leased premises. In either case, Lessor
7 shall charge Lessee per diem rental for storage of such property. Lessor shall
8 bear no responsibility or liability for damage to or expense incurred as a result of
9 property left, removed or stored under the provisions of this Section. Lessee shall
10 pay to Lessor any expenses or charges under this Section billed to Lessee by
11 Lessor within thirty (30) days after delivery of any such bill by Lessor to Lessee.

12 **Section 10.3. Post-Show Inspection:** Within ten (10) days following the
13 expiration of the occupancy period, Lessee shall accompany Lessor during a tour
14 of the premises to determine the condition thereof. Items corrected or repaired by
15 Lessor, deemed by Lessor to be the responsibility of Lessee, shall be billed by
16 Lessor and paid by Lessee within thirty (30) days after receipt of such bill.

17 **Article XI**

18 **Section 11.1. Remedies:** It is understood and agreed that any and all
19 duties, liabilities and/or obligations imposed upon or assumed by Lessee and
20 Lessor by or under this lease shall be taken or construed as cumulative and that
21 the mention of any specified duty, liability or obligation imposed upon or assumed
22 by Lessee or Lessor under this Lease, shall not be taken or construed as a
23 limitation or restriction upon any or all of the other duties, liabilities, or obligations
24 imposed upon or assumed by Lessee under this Lease. The remedies provided
25 herein shall be construed to be cumulative and in addition to any other remedies
26 provided herein, or any remedies provided in law or equity which Lessor or
27 Lessee would have in any case. It is understood and agreed that Lessor shall
28 have the right to seek and obtain in any court of competent jurisdiction an
29 injunction without the necessity of posting a bond to restrain a violation or alleged
30 violation by Lessee of any covenant or covenants contained in this agreement,
31 anything to the contrary notwithstanding. In no case shall a waiver by either party
32 of the right to seek relief under this provision constitute a waiver of any other or
33 further violation. The remedies provided hereunder shall not be deemed
34 exclusive of other remedies not specified.

35 **Article XII**

36 **Section 12.1. Impossibility of Performance:** If, for any reason, an
37 unforeseen event not the act of Lessor occurs, including but not limited to fire,
38 casualty, act of God, labor strike or other unforeseen occurrence which renders
39 impossible the fulfillment of any rental period of this Lease, Lessee shall have no
40 right to nor claim for damages against Lessor; but Lessee shall not be liable for
41 the payment of rent for said rental period, except that if such impossibility relates
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1 only to more than five percent (5%) of the rental period, Base Rent, if determined
2 under Section 1.3(A)(ii) hereof, shall be prorated to account for the number of
3 scheduled hours the Show is not open to the public.

4
5 **Article XIII**

6 **Section 13.1. Payment:** Lessee shall make all payments due under this
7 Agreement by check, made payable to the City of Annapolis. In addition to all
8 other amounts due hereunder, Lessee shall pay Lessor a monthly late fee of
9 1.5% (18% per annum) of any payment more than sixty (60) days past due, until
10 paid.

11
12 **Article XIV**

13 **Section 14.1. Time is of the Essence:** Time is of the essence in the
14 performance of this Agreement, and the times herein granted shall not be
15 extended for any reason, except as provided herein, for the occupancy or use of
16 the aforementioned premises or for the installation or removal of equipment,
17 materials or displays therefrom without written permission from the Lessor.

18
19 **Article XV**

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

26
27 **Article XVI**

28 **Section 16.1. Independent Contractor:** Lessee herein is an
29 independent contractor and not the agent or employee of the Lessor. Under no
30 circumstances shall this Lease be considered a partnership or joint venture.

31
32 **Article XVII**

33 **Section 17.1. Liens, Etc:** Lessee hereby consents to and Lessor shall
34 have a lien upon all property of Lessee located from time to time upon the
35 premises for any and all unpaid charges which arise under this Lease. Lessee
36 hereby consents to and Lessor shall have the power to impound and retain the
37 possession of such property until all such charges and late fees due under Article
38 XIII have been paid, in full, to the satisfaction of Lessor. In the event such
39 charges remain unpaid ten (10) days after the termination of the rental period,
40 the Lessor shall have the power to sell such property at public auction, and apply
41 the receipts from such auction to all such unpaid charges.

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43 **Article XVIII**

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UNITED STATES SAILBOAT SHOWS,

INC.

Witness

BY: _____
C. EDWARD HARTMAN, PRESIDENT

UNITED STATES POWERBOAT SHOWS, INC.

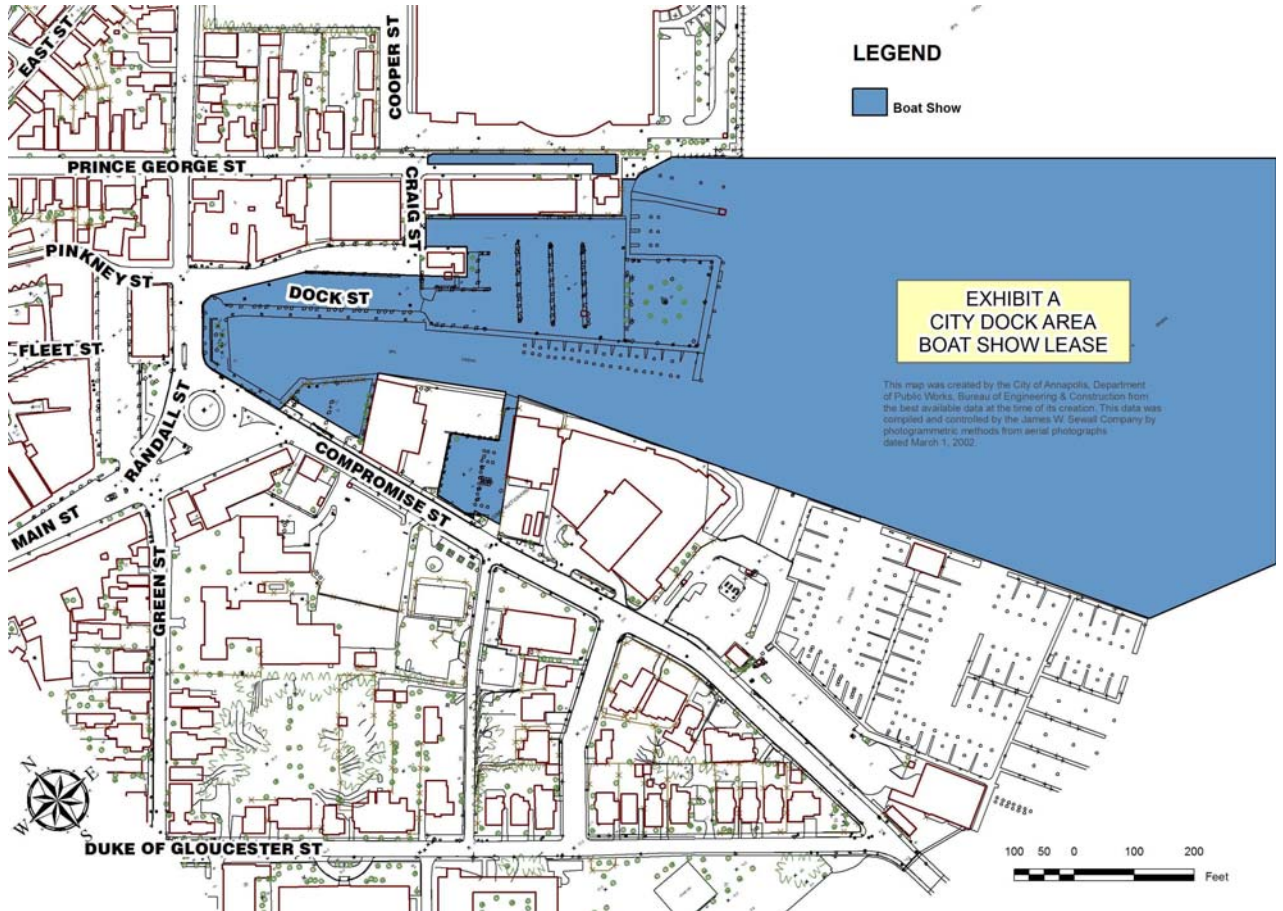
Witness

BY: _____
C. EDWARD HARTMAN, PRESIDENT

Approved as to form and legal sufficiency:

Steve Kling Date
Acting City Attorney

Exhibit A



Staff Paper

O-35-08 Lease of City property: Boat Shows in 2013 & 2014

Under Article II, Section 8 of the Annapolis City Charter, it is necessary for the City Council to enact an ordinance to authorize a lease of City property. O-35-08 seeks to do just that for the Boat Shows in 2013 & 2014. Areas of the City to be leased include municipal property located in the general harbor, Dock Street, and the Edgewood Road area.

The lease would be executed as between the City of Annapolis (Lessor) and United States Sailboat Shows, Inc., and United States Powerboat Shows, Inc. (Lessee). Under the terms of the lease, rent shall be (A) the greater of (i) 50% of Lessee's gross receipts (after deducting admission taxes) from the sale by Lessee of tickets for admission to the shows for that year (hereinafter "Ticket Sales Base Rent") or, (ii) Three Hundred Seventy-Five Thousand Nine Hundred Fifty Dollars (\$375,950.00) (hereinafter "Minimum Base Rent"); plus (B) if the Edgewood Road property is used, Two Thousand Sixty Dollars (\$2,060.00) each year used (hereinafter "Edgewood Road Rent"). In addition to the Base rent, Lessee shall pay Lessor, Additional Rent equal to Twenty-Five Thousand Seven Hundred Fifty Dollars (\$25,750.00) toward the costs incurred by the City in providing electricity, water, inspections and public safety services to the Boat Shows and in providing increased public services during the Shows. Lessee shall pay Lessor the Additional Rent and (if applicable) Edgewood Road rent, in full, at the time Lessee pays the Minimum Base Rent.

Just as with the lease executed last year (O-01-07; for years 2009, 2010, and 2011), the Lessee is responsible for the development of a transportation plan which includes a parking element.

Prepared by Seth B. Zirkle, Office of Law, (410) 263-1184