

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

2
3 **ORDINANCE NO. O-47-08Amended**

4
5 **Introduced by Mayor Moyer**

LEGISLATIVE HISTORY			
First Reader:	Public Hearing:	Fiscal Impact Note:	120 Day Rule:
12/22/08	01/26/09	01/16/09	04/22/09
Referred to:	Meeting Date:	Action Taken:	
Economic Matters	02/26/09	Favorable with amendments	

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9 **AN ORDINANCE** concerning

10
11 **Lease of City Dock for the 2009 Maryland Maritime Heritage Festival, Inc.**

12
13 **FOR** the purpose of authorizing a lease of certain municipal property located in the harbor
14 and Dock Street areas to the Maryland Maritime Heritage Festival, Inc., a body
15 corporate, from April 29 to May 4, 2009, subject to certain terms, provisions, and
16 conditions, for the purpose of conducting a maritime festival.

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18 * * * * *

19 **WHEREAS,** the Maryland Maritime Heritage Festival, Inc. ("Lessee"), sponsor of the
20 Maryland Maritime Heritage Festival, desires to lease certain municipal
21 property for the purpose of conducting maritime related festivities; and

22
23 **WHEREAS,** the Annapolis City Council finds that such a festival would be a way of
24 educating our residents and visitors about the City's vast and diversified
25 maritime history; and

26
27 **WHEREAS,** a lease setting forth terms of the rental has been prepared and is considered
28 satisfactory; and

29
30 **WHEREAS,** the Annapolis City Council finds that the premises subject to the proposed
31 lease are not needed by the City for public use during the term of the
32 proposed lease other than the uses specified in the lease; and

33
34 **WHEREAS,** Article III, Section 8 of the Charter of the City of Annapolis requires the
35 passage of an ordinance to authorize the leasing of City-owned property.

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2 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY**
3 **COUNCIL** that the proposed Lease Agreement between the City of Annapolis and Lessee
4 for the rental of certain municipal property in the harbor and Dock Street area, a copy of
5 which is attached hereto and made a part hereof, for the period April 29 to May 4, 2009, is
6 hereby approved and the Mayor is authorized to execute the Lease Agreement on behalf of
7 the City of Annapolis. It is further expressly found by the City Council that the festivities to
8 be conducted on the property referred to in the Lease Agreement will stimulate local
9 interest in the maritime industry, encourage visitors and residents of the City to visit the
10 downtown area, will generate tax revenues and rental income to the City and otherwise
11 provide economic benefits to the City, and will generally further the public need and
12 purposes for which the property is devoted.
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14 **SECTION II: AND, BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
15 **ANNAPOLIS CITY COUNCIL** that pursuant to City Code, Section 6.04.210.D.3, the
16 Annapolis City Council hereby waives the fees associated with Lessee's use of City
17 facilities (i.e. rent) and services in connection with the use of the property, except as
18 otherwise specified in the Lease Agreement.
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20 **SECTION III: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
21 **ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its
22 passage.
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24
25 **ADOPTED** this 9th day of March, 2009.
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28 **ATTEST:**

THE ANNAPOLIS CITY COUNCIL

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31 _____
32 **Regina C. Watkins-Eldridge, CMC**
33 **City Clerk**

BY: _____
ELLEN O. MOYER, MAYOR

LEASE AGREEMENT

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THIS LEASE AGREEMENT is made this ___ day of _____, 2009, by and between THE CITY OF ANNAPOLIS, a municipal corporation of the State of Maryland (hereinafter called "Lessor") and MARYLAND MARITIME HERITAGE FESTIVAL, INC., a Maryland non-profit corporation (hereinafter called "Lessee").

WHEREAS, the Maryland Maritime Heritage Festival is a locally recognized event which showcases the maritime heritage and maritime industry of Annapolis and the region; and

WHEREAS, Lessee desires to hold the Maryland Maritime Heritage Festival upon certain public property owned by Lessor in order to promote the maritime heritage and maritime industry of Annapolis and the region; and

WHEREAS, Lessor desires to enter into a Lease with Lessor for that purpose and to set forth the responsibilities of Lessee and Lessor related thereto.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the foregoing premises and the mutual terms and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Lessor and Lessee hereby agree as follows:

ARTICLE I

Section 1.1. Premises and Term: Subject to the provisions and terms of this Agreement, Lessor hereby leases to Lessee, for the purpose of holding the Maryland Maritime Heritage Festival, that property described in this Section and as shown on Exhibit A, which is attached and made a part hereof (hereinafter called the "Premises"), for the times indicated:

Area	Description	From	To
A	The designated area of the City Dock and Susan B. Campbell Park including the adjoining public parking areas extending to the Harbormaster's office.	6 p.m. on Wednesday, April 29, 2009	10 p.m. on Monday, May 4, 2009
B	B. The designated area known as Ego Alley and as shown in Exhibit A	6 p.m. on Wednesday, April 29, 2009	10 p.m. on Monday, May 4, 2009
	C. The parking spaces within the	6 p.m. on	10 p.m. on

C	Donner Parking Lot, and those spaces within the Public Parking Lot between Fleet Reserve and Fawcett Boat Supplies to be designated by the Police Chief	Wednesday, April 29, 2009	Monday, May 4, 2009
D	The riparian area to the east of Susan B. Campbell Park for the purpose of accommodating vessels The designated area will specifically not include those leased spaces known as Slip 20,21, and the bulkhead of Susan B. Campbell Park reserved for the M/V Harbor Queen.	6 p.m. on Wednesday, April 29, 2009	10 p.m. on Monday, May 4, 2009
	An easement over and across "Ego Alley" for the purpose of constructing a temporary walkway at a location to be approved by the Harbormaster. Lessee assumes all responsibility for the construction, maintenance, use of the walkway and for any injury to any person or property in the construction, maintenance, use or disassembling of the walkway.	To be constructed after 6 a.m. on Wednesday, April 29,2009	To be taken down and removed by lessee by 10 p.m. of Monday, May 4, 2009

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Section 1.15. FRESHFARM MARKETS, INC. Access and Free Use: Lessee and its assigns shall permit FRESHFARM MARKETS, INC. access to and free use of the Donner Parking Lot and the Public Parking Lot between Fleet Reserve and Fawcett Boat Supplies as reflected in "Area C" on Exhibit A during Sunday, May 3, 2009, between the hours of 6 a.m. and 2 p.m.

Section 1.2. Rent: The rent shall be One Dollar (\$1.00). Pursuant to City Code, Section 6.04.210.D.3., the City hereby waives any additional Rent (including but not limited to fees for traffic control services if any provided, parking meters authorized for use by Lessee, inspections, permit applications and rental beyond that stated above), except as provided herein.

Section 1.3. Use of Premises: The Premises may be used by Lessee for Maryland Maritime Heritage Festival activities. Lessor's agreement to lease the herein identified property to Lessee, in no way creates an obligation for Lessor to furnish any services, materials or equipment (including for example dock facilities) for the Maryland Maritime Heritage Festival, except as specifically provided in Article III hereof.

1 Section 1.4. Alternative Boat Slips: Appropriate alternative boat slips shall be
2 made available to M/V Miss Annie and Water Taxis operated by Watermark at
3 all times during the term of the subject lease agreement.
4

5 Section 1.5 Administrative: Modifications: The parties may, at any time,
6 modify the following terms (but no other terms) of this Lease Agreement:

7 A. The property or properties to be used and occupied, provided such
8 modifications do not result in an increase or enlargement of the specified
9 properties or alter the areas identified as the Premises herein above; and

10 B. The dates and hours during which such property will be used, provided
11 such modifications do not result in an increase or enlargement of the dates or
12 times set forth herein above; and

13 C. Lessee's obligations with regard to security on the Premises and the
14 payment of fees for City inspections of the Premises as provided in section 3.6
15 hereof.

16 Following a request by either party for such a modification, pursuant to Section
17 8, Article III of the City Charter, the Mayor may negotiate and agree to or reject
18 same on behalf of the Lessor without the necessity of an additional ordinance
19 approving that modification. Any such modification shall be set forth in a letter
20 of understanding executed by the parties and appended to this Lease
21 Agreement. However, any modification cannot take effect until the text of the
22 modification is made available to the City Council and the Council has had the
23 opportunity to review the same.
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25 ARTICLE II

26
27 Section 2.1. Liquor Sales: Provided it shall first obtain all necessary
28 licenses from the Alcoholic Beverage Control Board (ABCB), Lessee may
29 serve beer, wine and/or liquor at a private reception to which the public shall
30 not be admitted in the area of the City Dock and Susan Campbell Park at such
31 locations therein and on/at such dates, time and places and under such terms
32 authorized by the ABCB. The City makes no representations with respect to
33 Lessee's ability to obtain any such license. If such a license is issued, then in
34 addition to such other limitations that may be imposed by the ABCB, the
35 following limitations and requirements shall be the sole responsibility of
36 Lessee:

37 A. The beer, wine and liquor consumption area shall be restricted to
38 a tented area so as to restrict beer, wine and liquor consumption to the tented
39 area.

40 B. There shall be no beer, wine or liquor consumption or other open
41 containers of alcoholic beverages outside of the tented area.
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Section 2.7. Exhibitor List: Lessee shall provide to the City contact not later than April 15, 2009, a complete list of all exhibitors, displays, activities, festivities, music, entertainment and operations to take place on the Premises during the term hereof. The list shall not be amended, except for deletions thereto, without the expressed written consent of the City contact.

Section 2.8. Exhibitor Licenses/Taxes: Exhibitors or vendors who are permitted to sell any item at the Maryland Maritime Heritage Festival shall obtain all required non-City licenses and pay all required Federal, State, County and City taxes and fees. This Lease shall satisfy any City licensing requirements for such exhibitors.

ARTICLE III

Section 3.1. Facilities and Services: In addition to the use of the Premises during the term set forth above, Lessee shall have use of the facilities and services set forth in this Article under the terms and conditions provided herein.

Section 3.2. Security Services: Lessee shall be responsible for security within the Premises during the term hereof. Lessee shall establish a security liaison with the Annapolis Police Department (APD) and coordinate all Premise's security with APD according to APD's requirements. In addition to such other requirements as may be imposed by the APD, Lessee shall, at its sole expense, hire licensed professional security officers to provide security within the Premises during the entire term of this Lease at such staffing levels as the APD may, in its discretion, require.

Section 3.3. Fire Services: Following the erection of all booths and other festivities' structures as described under Section 6.1 hereof but before the festival opens to the public, the parties shall meet at the Premises to assure compliance with Fire Department regulations and accessibility of fire lanes and turning radius. No burning, welding, open flame devices or running of watercraft propulsion engines shall be permitted on the Premises.

Section 3.4. Utilities: Lessor shall make available to the Premises, existing water and electricity facilities. Lessee at its own expense shall install any temporary electrical equipment, lines and devices required to provide power to the Premises, in compliance with National Electric Code. Lessee shall not operate any such equipment, lines or devices until inspected and approved by the City Department of Public Works.

1 Section 3.5. Other Services: The parties shall coordinate other services
2 in advance of the term of this Lease provided, however, that Lessee shall
3 assume any and all financial responsibility for any such other services as may
4 be required by Lessor.

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6 Section 3.6. Pre-Festivities Inspection: Before the festival opens to the
7 public, Lessee's representative shall meet with representatives of the
8 Annapolis Police Department, Annapolis Fire Department, Director of
9 Emergency Management, Harbormaster, Annapolis Central Services and
10 Annapolis Department of Public Works to inspect the Premises and nearby
11 areas to determine compliance with City requirements. Written approval by
12 representatives of all such inspectors is required before Lessee may open the
13 festival or Premises to the public. Lessor shall not refuse permission to open
14 the festival or any part thereof under this paragraph unless a threat to health or
15 safety has been identified by Lessor to Lessee. Lessor shall make every effort
16 to limit that part of the festival or Premises not opened in the event of such
17 threat and to allow Lessee to open the closed portion of the festival or the
18 Premises as soon as the threat is abated to Lessor's satisfaction. Lessee shall
19 pay Lessor an administrative fee of Five Hundred Dollars (\$500.00) for the cost
20 of such inspections.

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22 Section 3.7. Transportation & Parking Plan: The Lessee shall prepare
23 and submit to the Director of Transportation a Transportation Plan with a
24 Parking Element. The Plan shall address matters specified by the Director and
25 shall be submitted no later than ~~March 1~~ April 1, 2009. Except for public ways
26 within the leased premises, the Plan shall not provide for the closure of any
27 street or restrict parking to those associated with the Festival. Moreover, in
28 publicizing the Festival, the lessee will direct all persons attending the event to
29 park their vehicles at satellite lots and ride the shuttle to the site of the Festival.
30 Upon receipt of the Plan, the Director shall make copies available to relevant
31 agencies and to interested parties who have requested a copy. To assure a
32 better understanding and to coordinate implementation, the Director shall
33 arrange for a meeting with relevant agencies and representatives of interested
34 parties to review the Plan.

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36 Section 3.8. Notice to Correct: Following the inspection referred to in
37 the preceding section, at all times during the term of this Lease, and during
38 festivities on the Premises, Lessee shall promptly comply with all reasonable
39 directives of the City intended to bring Lessee and festivities on the Premises
40 into compliance with the requirements of this Lease and the City Code, as well
41 as the public safety requirements of the Police Department, Fire Department
42 and Harbormaster.

ARTICLE IV

Section 4.1. Insurance: Lessee shall, at its own expense, obtain and keep in full force and effect comprehensive commercial general liability insurance of no less than One Million Dollars (\$1,000,000.00) combined single limit, bodily injury and property damage; and Three Million Dollars (\$3,000,000.00) umbrella policy; which shall be effective during the entire period of time during which the Lessee shall use or occupy the Premises, or any part thereof.

Such insurance policy shall specifically name the City of Annapolis, and in their capacity as such, the officers, agents and employees thereof, as additionally insured, 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: (1) an act, omission or the negligence of Lessee, its officers, agents, employees contractors, patrons, guests or invitees; or (2) to the use of the Premises, or any part thereof by Lessee, its officers, agents, employees, contractors, patrons, guests or invitees.

The insurer or insurers of the policy or policies referred to in the preceding paragraph shall be: authorized to write the required insurance; approved by the Insurance Commissioner of the State of Maryland; and subject to the reasonable approval of the City Attorney of Annapolis. The form and substance of the policy or policies of insurance shall also be subject to reasonable approval by the City Attorney of Annapolis, and shall be submitted to the City Attorney for such approval not later than April 15, 2009. Said policy or policies of insurance shall be filed by Lessee with the City Attorney of Annapolis not later than the first to occur of: 10 days prior to the first day of the term set forth above or 10 days prior to Lessee's occupancy of the Premises.

The Certificate for each such insurance policy 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 to the City Attorney of Annapolis and that such notice shall be transmitted postage prepaid, with return receipt requested.

ARTICLE V

Section 5.1. Hold Harmless/Indemnity: Lessee agrees that it shall forever indemnify, defend and hold harmless the Lessor, its officers, agents, employees, 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 by any person or to any property due to or alleged to be due to:

1 (1) an act, omission or the negligence of Lessee, its officers, agents,
2 employees, contractors, patrons, guests or invitees; or (2) the use of the
3 Premises, or any part thereof, by Lessee, its officers, agents, employees,
4 contractors, patrons, guests or invitees.

5 Lessee agrees to reimburse Lessor, within thirty (30) days after demand
6 for such reimbursement, for any damage done to Lessor's buildings, facilities,
7 equipment or property caused by the negligence of Lessee, its officers, agents,
8 employees, contractors, patrons, guests or invitees during Lessee's use and/or
9 occupancy of the Premises or any part thereof.

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ARTICLE VI

13 Section 6.1. Interior Construction: Lessee shall have the right to
14 construct, install or erect upon the Premises such seats, booths, tents, exhibits
15 and any other apparatus or structure which Lessee may deem necessary or
16 desirable for its purposes. Lessee shall not have the right to enclose the
17 Premises in such a manner as to limit entry onto the Premises or any part
18 thereof, except to enclose the beer, wine and/or liquor consumption area.

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21 Section 6.2. Permits: Subject to the inspection provisions of Article III
22 and to standard alcoholic beverage, public safety and health approvals, any
23 and all zoning permits, any and all licenses or authorizations required to be
24 obtained from the City of Annapolis or any agency thereof by the Lessee for
25 the purpose of constructing or erecting the temporary structures described in
26 Section 6.1 above or for operating the festival shall be deemed granted and
27 issued upon the execution of this Lease by the Lessor and Lessee. All other
28 Federal, State or County permits which may be required shall be the
29 responsibility of the Lessee.

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ARTICLE VII

32 Section 7.1. Trash: Lessee, at its sole expense, shall provide the
33 number of trash containers within the Premises as required by the Director of
34 Public Works in his sole discretion during the entire occupancy period of the
35 Premises and shall provide for the prompt removal of said containers, trash
36 and refuse by a City approved waste removal contractor.

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38 Section 7.2. Cleanliness: Lessee, at its sole expense, shall be
39 responsible for keeping the Premises free of unnecessary trash and refuse and
40 shall place the same in the trash containers referred to in the preceding
41 section. Lessee shall at all times during the occupancy of the Premises police
42 the Premises for trash and refuse removal.

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ARTICLE XI

Section 11.1. Impossibility of Performance: If, for any reason, an unforeseen event not the act of Lessor occurs, including but not limited to flood, severe weather, fire, casualty, act of God, labor strike or other unforeseen occurrence which renders impossible the fulfillment of any rental period of this lease, Lessee shall have no right to nor claim for damages against Lessor; but Lessee shall not be liable for the payment of rent for said rental period, except that if such impossibility relates only to part of the rental period, rent shall be prorated; however, this Lease shall not terminate but shall continue in accordance with the terms of this Lease.

ARTICLE XII

Section 12.1. Payment: Lessee shall make all payments due under this Lease by check, payable to the City of Annapolis, and deliver the payments to the Annapolis Finance Department, 160 Duke of Gloucester Street, Annapolis, Maryland, 21401. In addition to all other amounts due hereunder, Lessee shall pay Lessor a monthly late fee of 1.5% (18% per annum) of any payment required hereunder that is more than sixty (60) days past due, until paid.

ARTICLE XIII

Section 13.1. Time is of the Essence: Time is of the essence in the performance of this Lease, and the times herein granted shall not be extended for any reason, except as provided herein, for the occupancy or use of the Premises or for the installation or removal of equipment, materials or displays therefrom without written permission from Lessor.

ARTICLE XIV

Section 14.1. Assignment: Lessee shall not assign or transfer this Lease, in whole or in part, or any of its rights hereunder, without the prior written consent of the Lessor, which consent shall not be arbitrarily withheld.

ARTICLE XV

Section 15.1. Non Agent: Lessee herein is an independent contracting party and not the agent or employee of the Lessor.

ARTICLE XVI

1 Section 16.1. Liens, Remedies, etc: Lessee hereby consents to and
2 Lessor shall have a lien upon all goods, personal property and fixtures of
3 Lessee located upon the leased Premises for any and all unpaid charges
4 which arise under this Lease. Lessee hereby consents to and Lessor shall
5 have the power to impound and retain the possession of such goods, personal
6 property and fixtures until all such charges and fees due under this Lease have
7 been paid, in full, to the satisfaction of Lessor. In the event such charges
8 remain unpaid thirty (30) days after the termination of the term of this Lease,
9 Lessor shall have the power to sell such property at public auction, and apply
10 the receipts from such auction to all such unpaid charges.

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ARTICLE XVII

14 Section 17.1. Compliance with All Laws: Lessee agrees to comply with
15 all laws, ordinances, and statutes applicable to the Premises, or any part
16 thereof, and the use thereof, and to pay all taxes or charges imposed by law in
17 connection with Lessee's use and occupancy of the Premises.

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ARTICLE XVIII

21 Section 18.1. Contact Persons: For purposes of coordinating
22 inspections, providing notices and other matters set forth under this Lease,
23 except as otherwise provided in this Lease, the parties designate the following
24 contact persons:

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- A. Lessor: Director of Economic Development
 160 Duke of Gloucester Street
 Annapolis, Maryland 21401
 Phone No. 410 263 7940

- B. Lessee: Maryland Maritime Heritage Festival, Inc.
 49 Old Solomons Island Road, Ste. 204
 Annapolis, Maryland 21401
 Attention: Bob Burdon

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ARTICLE XIX

38 Section 19.1. Local Exhibitors: Lessee shall use its best efforts to
39 contract with Annapolis exhibitors in all matters related to the festival.

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ARTICLE XX

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Section 20.1 General Powers: Nothing herein shall be construed to preclude the City from exercising its general public safety powers as it deems appropriate to protect the public safety, interest and welfare.

IN WITNESS WHEREOF, the parties hereto, by and through this duly authorized agents, have caused this Lease to be executed this lease this 9th day of March, 2009.

ATTEST: **CITY OF ANNAPOLIS COUNCIL**

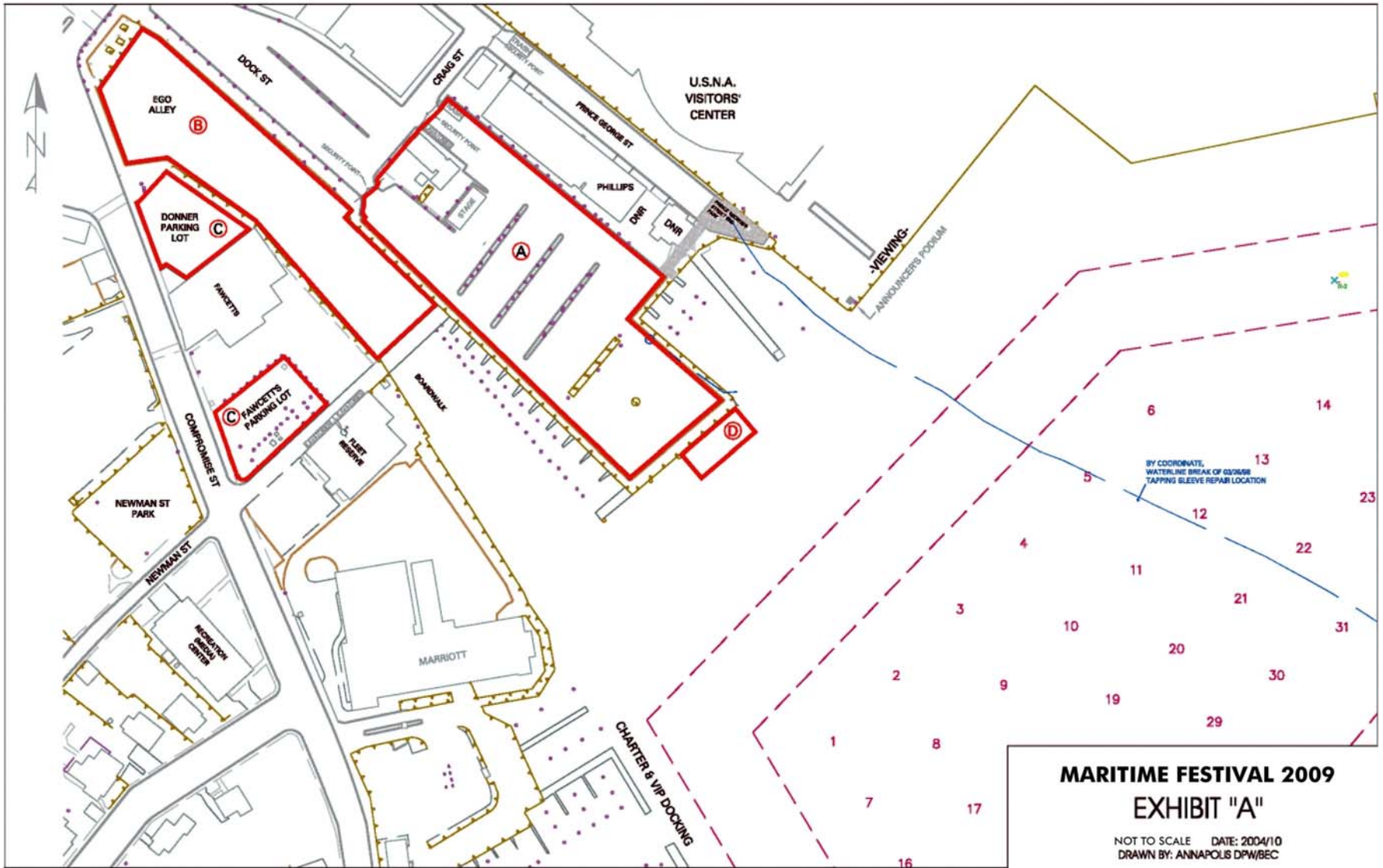
Regina C. Watkins-Eldridge, CMC
City Clerk

BY: _____
ELLEN O. MOYER, MAYOR

MARYLAND MARITIME HERITAGE FESTIVAL, INC .

WITNESS
Robert Burdon, PRESIDENT
Address: 151 West Street
Annapolis, Maryland
Phone: 410-268-7676

Reviewed for legal sufficiency
Stephen Kling, Acting City Attorney Date



MARYLAND MARITIME HERITAGE FESTIVAL - Exhibit A