

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

2
3 **ORDINANCE NO. O-50-09 Amended**

4
5 **Introduced by Alderman Arnett**

6
7 **Co-sponsored by Mayor Moyer**
8 **Alderman Shropshire**
9

LEGISLATIVE HISTORY			
First Reading:	Public Hearing:	Fiscal Impact Note:	120 Day Rule:
09/14/09	10/15/09	10/05/09	01/12/10
Referred to:	Meeting Date:	Action Taken:	
Maritime Adv Bd	09/17/09	Favorable	
Economic Matters	09/30/09	Favorable w/ Amd	

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11
12 **AN ORDINANCE** concerning

13 **Lease of City Property: Melges 24 World Championship**

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16 **FOR** the purpose of authorizing a lease of municipal property located in the general
17 harbor area to the Eastport Yacht Club from October 23 – 31, 2009, to conduct
18 the Melges 24 World Championship, a sailing race.

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20 * * * * *

21
22 **WHEREAS,** the Eastport Yacht Club desires to lease certain municipal property for the
23 purpose of conducting the 2009 Melges 24 World Championship, a sailing
24 race; and

25
26 **WHEREAS,** the Annapolis City Council believes that the proposed race would inure to
27 the benefit of the City; and

28
29 **WHEREAS,** a lease setting forth details of the rental has been prepared and is
30 considered satisfactory; and

31
32 **WHEREAS,** Article III, Section 8 of the Charter of the City of Annapolis requires the
33 passage of an ordinance to authorize the lease.

34
35 **NOW THEREFORE:**
36

1 **SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS**
2 **CITY COUNCIL** that the proposed lease between the City of Annapolis and the Eastport
3 Yacht Club, Limited for the rental of certain municipal property in the general harbor
4 areas, as described in the lease, a copy of which is attached hereto and made a part
5 hereof, for October 23 – 31, 2009, more specifically described in the attached lease,
6 and subject to the option to expand or reduce the number of days of the tenancy as
7 provided in the lease, is hereby approved and the Mayor is hereby authorized to
8 execute the lease on behalf of the City of Annapolis.
9

10 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
11 **ANNAPOLIS CITY COUNCIL** that it is expressly found by the City Council that the
12 property to be leased will better serve the public need for which the property was
13 acquired by stimulating local interest in the boating industry, encouraging visitors and
14 residents of the City to visit the harbor and dock area, by generating tax revenues and
15 rental income to the City and otherwise providing economic benefits to the City.
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17 **SECTION III: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
18 **ANNAPOLIS CITY COUNCIL** that this Ordinance shall take effect from the date of its
19 passage.
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22 **ADOPTED** this 5th day of October, 2009.
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24 **ATTEST:**

THE ANNAPOLIS CITY COUNCIL

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28 _____
29 **Regina C. Watkins-Eldridge, MMC**
30 **City Clerk**

BY: _____
ELLEN O. MOYER, MAYOR

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LEASE AGREEMENT

Authorized by O-50-09

LEASE AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 200__, by and between THE CITY OF ANNAPOLIS, a municipal corporation (hereinafter called "Lessor") on the one hand and the EASTPORT YACHT CLUB, LIMITED. (hereinafter jointly and severally called "Lessee").

Article I

Section 1.1. Premises and Term: Lessor hereby leases to Lessee, for the purpose of holding a sailing race, 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:

Friday, October 23, to Sunday, October 31, 2009 Thursday, October 22, to Monday, November 1, inclusive

Section 1.2. Rent: Rent shall be \$4,500.00.

Article II

Section 2.1. Facilities and Services: Lessee shall have the use of the following facilities and services without additional charge:

All that area indicated on Exhibit A, which is attached hereto and made a part hereof, and all related facilities including ingress and egress, existing and normal street and harbor lighting, existing and normal electricity, water supply for said area, and normal police and fire protection. Lessee shall have use of showering facilities located in Harbormaster's building.

Section 2.2. Police Services: Lessor agrees to provide police services related to traffic control outside the event and liaison with Lessee's security guards inside the event without further charge.

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Section 2.3. Fire Services: Lessor agrees to provide fire protection as required without further charge. Following the erection of all tents and other event structures as described under Section 7.1 hereof but before the event opens, the parties shall meet at the premises to assure compliance with 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 demised premises during the open hours of the event.

Section 2.4. Utilities: Lessor shall provide water and electricity without further charge. Lessee at its own expense shall install all temporary electrical equipment, lines and devices required to provide power to the premises in compliance with National Electric Code. Lessee shall be responsible for refuse removal as provided under Section 8.1 hereof.

~~**Section 2.5. Parking and Transportation:** The Lessee shall coordinate all plans for the provision of any intra-city mode of transportation during the course of the event with the City of Annapolis Department of Transportation. Lessee shall furnish to Lessor a transportation plan including a parking element.~~

Section 2.6. Pre-Event Meetings and Inspection: Prior to the opening of the event, representatives of the Department of Neighborhood and Environmental Programs, Annapolis Police Department, Annapolis Fire Department, Harbormaster, and Annapolis Department of Public Works shall inspect the premises and nearby areas with Lessee's representative to determine compliance with City requirements and for determination of the condition of City property to be leased. Written approval by representatives of all these departments is required before Lessee may open the event. The opening of the event shall not be delayed by any department whose representative is not present for said inspection. Lessor shall not refuse permission to open the event or any part of the event under this paragraph unless a threat to health or safety has been identified. Lessor shall make every effort to limit that part of the event not opened in the event of such threat and to allow Lessee to open the closed portion of the event as soon as the threat is abated to Lessor's satisfaction. All other federal, state or county permits which may be required shall be the responsibility of the Lessee.

Section 2.7. Transportation: The Lessee shall prepare and submit to the Director of Transportation a Transportation Plan with a Parking Element. The Plan shall address matters specified by the Director and shall be submitted no later than October ~~4~~ 8, 2009. Except for public ways within the

1 leased premises, the Plan shall not provide for the closure of any street or
2 restrict parking to those associated with the event. Moreover, in publicizing
3 the event, the Lessee will encourage all persons attending the event to park
4 their vehicles at satellite lots and ride the shuttle to the site of the event. Upon
5 receipt of the Plan, the Director shall make copies available to relevant
6 agencies and to interested parties who have requested a copy.

7
8 **Section 2.8 Alcohol and Food Sales:** Lessee shall be permitted to sell food
9 and alcohol, provided that lessee has obtained all necessary permits for their
10 lawful sale. Consumption of alcohol shall be limited to a segregated area
11 within that area described in Section 1.1 of this Lease.

12
13 **Article III**

14
15 **Section 3.1. Insurance:** Lessee shall, at its own expense, obtain and
16 keep in full force and effect comprehensive commercial general liability
17 insurance of no less than ~~Two Million Dollars (\$2,000,000.00)~~ One Million
18 Dollars (\$1,000,000.00) combined single limit, bodily injury and property
19 damage; and ~~Eight Million Dollars (\$8,000,000.00)~~ Five Million Dollars
20 (\$5,000,000.00) umbrella policy; which shall be effective during the entire
21 period of time during which the Lessee shall use or occupy the premises, or
22 any part thereof.

23 Such insurance policy shall specifically name the City of Annapolis, and
24 in their capacity as such, the officers, agents and employees thereof, as
25 additionally insured, and insure against any and all loss, costs, damages, and
26 expenses suffered by any person, or to any property, including property
27 owned by Lessor, due to or alleged to be due to: an act, omission or the
28 negligence of Lessee, its officers, agents, employees, vendors, subtenants or
29 contractors; or directly or indirectly to the use of the premises, or any part
30 thereof by Lessee, its officers, agents, employees, vendors, subtenants or
31 contractors.

32 The insurer or insurers of the policy or policies referred to in the
33 preceding paragraph shall be: authorized to write the required insurance;
34 approved by the Insurance Commissioner of the State of Maryland; and
35 subject to the reasonable approval of the City Attorney of Annapolis. The form
36 and substance of the policy or policies of insurance shall also be subject to
37 reasonable approval by the City Attorney of the City of Annapolis, and shall
38 be submitted to the City Attorney for such approval not less than fifteen (15)
39 days prior to Lessee's occupancy of the premises. Said policy or policies of
40 insurance shall then be secured by Lessee and filed with the City Attorney of
41 the City of Annapolis not less than five (5) days prior to Lessee's occupancy
42 of the premises. Said approvals shall not be unreasonably withheld.

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

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

10
11 **Article IV**

12
13 **Section 4.1. Indemnity:** Lessee agrees that it shall forever indemnify,
14 defend and hold harmless the Lessor, its officers, agents, employees, from
15 and against any and all claims, suits, actions, judgments, and liability for loss,
16 injury, damages and/or expenses suffered or alleged to have been suffered
17 by any person or to any property due to or alleged to be due to: an act,
18 omission or the negligence of Lessee, its officers, agents, employees,
19 vendors, subtenants or contractors; or directly or indirectly the use of the
20 leased premises, or any part thereof, by Lessee, its officers, agents,
21 employees, vendors, subtenants or contractors.

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

28
29 **Article V**

30
31 **Section 5.1. Security:** Lessee shall contract with and pay, as
32 independent contractors, security guards in numbers sufficient to maintain
33 security, peace and order at the event inside the premises during the lease
34 term.

35
36 **Article VI**

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38 **Section 6.1. Interior Construction:** Lessee shall have the right to
39 construct, install or erect seats, platforms, booths, tanks, scaffolding, rigging,
40 floating piers, pilings, docks, catwalks, tents, exhibits, and any other
41 apparatus or structure which Lessee may deem necessary or desirable for the
42 purpose of presenting the race. In addition, the Lessee shall have the right to

1 erect and construct a temporary fence so as to enclose the premises in such
2 a manner as to limit entry onto the premises through controlled entrances.
3 Such fence shall not contain barbed wire, razor wire or any similar materials.

4
5 **Section 6.2. Exterior Construction:** Lessee agrees to erect and
6 construct temporary wooden sidewalks, wherever necessary to provide for
7 pedestrian traffic, outside of the leased premises where the existing sidewalks
8 are enclosed in the premises by said temporary fence described in Section
9 7.1. Said walks shall be handicap accessible and illuminated during the hours
10 of darkness and maintained by Lessee in a safe and secure condition.

11
12 **Section 6.3. ADA and Other Permits:** Lessee hereby assumes
13 exclusive responsibility for compliance with any and all applicable provisions
14 of the Americans with Disabilities Act of 1990, as amended from time to time
15 at the demised premises, during the entire time Lessee uses or occupies
16 those premises, or any part thereof, pursuant to this Lease Agreement.
17 Subject to the inspection provisions of Section 2.7 and to standard public
18 safety and health approvals, any and all permit, license or authorization
19 required to be obtained from the City or any agency thereof by the Lessee
20 during the term of this Lease for the purpose of constructing or erecting the
21 temporary structures described in Sections 6.1 and 6.2 above or for operating
22 the shows, shall be deemed granted and issued upon the execution of this
23 Lease by the Lessor and Lessee. All other federal, state or county permits,
24 which may be required, shall be the responsibility of the Lessee.

25
26 **Article VII**

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28 **Section 7.1. Trash:** Lessee, at its own expense, shall provide an
29 adequate number of trash containers for its use within the event grounds
30 during the entire occupancy period of the premises and shall provide for the
31 prompt removal of said containers, trash and refuse. Lessor, at its own
32 expense, shall provide an adequate number of trash dumpsters outside the
33 show grounds for the use of Lessee during the occupancy period and shall
34 provide for the prompt removal of trash and refuse in these dumpsters.

35
36 **Section 7.2. Cleanliness:** Lessee shall be responsible for keeping the
37 premises free of debris, trash and refuse and shall place the same in
38 dumpsters or receptacles.

39
40 **Section 7.3. Sanitation and Toilets:** Lessee shall, at its own expense,
41 provide adequate and sanitary toilet facilities throughout the demised
42 premises for use by the general public and others attending or participating in

1 the event.

2
3 **Article VIII**

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5 **Section.8.1. Quiet Enjoyment:** Lessor covenants with Lessee that at
6 all times during the term of this Lease Agreement, Lessee shall peacefully
7 hold and quietly enjoy the demised premises without any disturbance or
8 hindrance from Lessor or from any other person claiming through Lessor,
9 except that the City or others claiming through the Lessor, may enter onto the
10 demised premises to effect necessary repairs to their own facilities as
11 reasonably contemplated by the terms of this Agreement and to assure
12 compliance with the terms of this Agreement. Lessee shall cooperate with the
13 Lessor to effect this access to the demised premises.

14
15 **Section 8.2. Trash and Public Safety Cooperation:** The parties
16 agree to cooperate with each other and use their best efforts to ensure that
17 there is prompt trash removal, public safety protection and adequate traffic
18 control during the designated period of occupancy by the Lessee of the
19 premises.

20
21 **Article IX**

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23 **Section 9.1. Condition of Premises After Event:** Following the
24 occupancy period, the Lessee, at Lessee's sole expense, shall return the
25 premises in the same or superior condition than received, natural wear and
26 tear excepted.

27
28 **Section 9.2. Lessee's Equipment After Event:** Prior to the expiration
29 of the lease term, Lessee shall immediately remove all of its property, fixtures
30 and chattels from the leased premises. In the event that Lessee, its officers,
31 agents, employees, vendors, subtenants or contractors fail to remove any
32 item of property, Lessor reserves the right to remove and store any such
33 property after the expiration or termination of the lease term at Lessee's
34 expense or, as an alternative, to leave the property at the leased premises. In
35 either case, Lessor shall charge Lessee per diem rental for storage of such
36 property. Lessor shall bear no responsibility or liability for damage to or
37 expense incurred as a result of property left, removed or stored under the
38 provisions of this Section. Lessee shall pay to Lessor any expenses or
39 charges under this Section billed to Lessee by Lessor within thirty (30) days
40 after delivery of any such bill by Lessor to Lessee.

41
42 **Section 9.3. Post-Event Inspection:** Within ten (10) days following the

1 expiration of the occupancy period, Lessee shall accompany Lessor during a
2 tour of the premises to determine the condition thereof. Items corrected or
3 repaired by Lessor, deemed by Lessor to be the responsibility of Lessee, shall
4 be billed by Lessor and paid by Lessee within thirty (30) days after receipt of
5 such bill.

6
7 **Article X**
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9 **Section 10.1. Remedies:** It is understood and agreed that any and all
10 duties, liabilities and/or obligations imposed upon or assumed by Lessee and
11 Lessor by or under this lease shall be taken or construed as cumulative and
12 that the mention of any specified duty, liability or obligation imposed upon or
13 assumed by Lessee or Lessor under this Lease, shall not be taken or
14 construed as a limitation or restriction upon any or all of the other duties,
15 liabilities, or obligations imposed upon or assumed by Lessee under this
16 Lease. The remedies provided herein shall be construed to be cumulative and
17 in addition to any other remedies provided herein, or any remedies provided
18 in law or equity which Lessor or Lessee would have in any case. It is
19 understood and agreed that Lessor shall have the right to seek and obtain in
20 any court of competent jurisdiction an injunction without the necessity of
21 posting a bond to restrain a violation or alleged violation by Lessee of any
22 covenant or covenants contained in this agreement, anything to the contrary
23 notwithstanding. In no case shall a waiver by either party of the right to seek
24 relief under this provision constitute a waiver of any other or further violation.
25 The remedies provided hereunder shall not be deemed exclusive of other
26 remedies not specified.

27
28 **Article XI**
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30 **Section 11.1. Impossibility of Performance:** If, for any reason, an
31 unforeseen event not the act of Lessor occurs, including but not limited to fire,
32 casualty, act of God, labor strike or other unforeseen occurrence which
33 renders impossible the fulfillment of any rental period of this Lease, Lessee
34 shall have no right to nor claim for damages against Lessor; but Lessee shall
35 not be liable for the payment of rent for said rental period, except that if such
36 impossibility relates only to more than five percent (5%) of the rental period,
37 Base Rent, as determined under Section 1.2 hereof, shall be prorated to
38 account for the number of scheduled hours the event is not open to the public.
39

40 **Article XII**
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42 **Section 12.1. Payment:** Lessee shall make all payments due under

1 this Agreement by check, made payable to the City of Annapolis. In addition
2 to all other amounts due hereunder, Lessee shall pay Lessor a monthly late
3 fee of 1.5% (18% per annum) of any payment more than sixty (60) days past
4 due, until paid.

5
6 **Article XII**

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8 **Section 13.1. Time is of the Essence:** Time is of the essence in the
9 performance of this Agreement, and the times herein granted shall not be
10 extended for any reason, except as provided herein, for the occupancy or use
11 of the aforementioned premises or for the installation or removal of
12 equipment, materials or displays therefrom without written permission from
13 the Lessor.

14
15 **Article XIV**

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17 **Section 14.1. Assignment:** Lessee shall not assign, transfer, or
18 otherwise dispose of this Lease without the prior written consent of Lessor,
19 but such consent shall not be unreasonably or arbitrarily withheld.

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21 **Article XV**

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23 **Section 15.1. Independent Contractor:** Lessee herein is an
24 independent contractor and not the agent or employee of the Lessor. Under
25 no circumstances shall this Lease be considered a partnership or joint
26 venture.

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28 **Article XVI**

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30 **Section 16.1. Liens, Etc:** Lessee hereby consents to and Lessor shall
31 have a lien upon all property of Lessee located from time to time upon the
32 premises for any and all unpaid charges which arise under this Lease. Lessee
33 hereby consents to and Lessor shall have the power to impound and retain
34 the possession of such property until all such charges and late fees due under
35 Article XIII have been paid, in full, to the satisfaction of Lessor. In the event
36 such charges remain unpaid ten (10) days after the termination of the rental
37 period, the Lessor shall have the power to sell such property at public auction,
38 and apply the receipts from such auction to all such unpaid charges.

39
40 **Article XVII**

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42 **Section 17.1. Compliance with all Laws:** Except as otherwise

1 provided herein, Lessee agrees to comply with all laws, ordinances, and
2 statutes applicable to the leased premises, or any part thereof, and the use
3 thereof, and to pay all taxes or charges imposed by law in connection with
4 Lessee's use and occupancy of the said leased premises, provided, however,
5 the Lessee shall have reasonable time to correct any such alleged violation.

6
7 **Article XVIII**

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9 **Section 18.1. Immunities:** Nothing herein shall be interpreted or
10 construed to waive, in whole or in part, or to otherwise diminish Lessor's
11 statutory, common law or other immunities in any action in tort, in contract or
12 in any other form. The parties further agree that if any duty assumed by
13 Lessor under the terms of this Agreement or any action taken by Lessor
14 Pursuant to any such tern is construed to waive, in whole or in part, any such
15 immunity, then the immunity shall nevertheless be fully restored, and shall
16 bind and protect the parties as a contractual undertaking.

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19 **Article XIX**

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21 **Section 19.1 Authority:** This Lease is authorized by Ordinance O-50-
22 09Amended adopted by the Annapolis City Council.

23
24 **IN WITNESS WHEREOF**, the City of Annapolis, by and through its duly
25 authorized agent, has caused this Lease to be executed on its behalf, and the
26 Lessee, Eastport Yacht Club, Limited, has duly executed this lease this
27 _____ day of _____, 200__.

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31 ATTEST: THE ANNAPOLIS CITY COUNCIL

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34 _____ BY: _____
35 Regina C. Watkins-Eldridge, MMC ELLEN O. MOYER, MAYOR
36 City Clerk

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39 Eastport Yacht Club, Limited.

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42 _____ BY: _____

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Witness

Sharon Hadsell, Commodore

Approved as to form and legal sufficiency

Stephen Kling, City Attorney

