

REGULAR MEETING

March 11, 2002

The Regular Meeting of the Annapolis City Council was held on March 11, 2002 in the Council Chamber. Mayor Moyer called the meeting to order at 7:32 p.m.

Present on Roll Call: Mayor Moyer, Aldermen Hammond, Tolliver, Hoyle, Kelley, Cordle, Fox, Cohen

Alderman Carter arrived at 7:40 p.m.

Staff Present: City Attorney Goetzke, Public Works Director Smith, Civil Engineer II Brice, Acting Finance Director Elliot

- C Mayor Moyer presented a Glittering Gems of Annapolis Award to Morris Blum
- C Alderman Hammond moved to approve the Journal of Proceedings for February 11, 2002 and February 25, 2002. Seconded. CARRIED on voice vote.

PETITIONS, REPORTS AND COMMUNICATIONS

- C Acting Finance Director Elliott presented the FY 2003 Budget Preparation Schedule.
- C Public Works Director Smith and Civil Engineer II Brice gave a brief presentation on O-10-02 Stormwater Management
- C Arthur Greenbaum, 7 Constitution Square, Annapolis, MD 21401 spoke: commending the administration on the aggressive stance with the Legislature; requesting the fire plug at the corner of Amos Garrett and West Street be moved around the corner; and, regarding the loading zones along West Street at Calvert Street and at Cathedral.
- C Alexander Dennis, 42 Hudson Street, Suite 211, Annapolis, MD 21401 spoke in favor of R-10-02 and O-14-02.

LEGISLATIVE ACTION

ORDINANCES

O-3-02 For the purpose of authorizing addendum to lease agreements between the United States Yacht Shows, Inc. and Annapolis Boat Shows, Inc. and the City of Annapolis for the previously approved 2002, 2003, 2004 and 2005 boat shows for the purpose of amending Article VIII, Section 8.1 Trash, so as to provide that the City will furnish and remove trash containers and refuse from outside the show grounds; and all matters relating to said addendum to lease agreements.

Alderman Hammond moved to adopt O-3-02 on second reading. Seconded.

The Economic Matters Committee reported favorably on O-3-02.

The Finance Committee reported favorably on O-3-02.

The main motion CARRIED on voice vote.

Alderman Hammond moved to adopt O-3-02 on third reading. Seconded. CARRIED on voice vote.

O-4-02 For the purpose of authorizing the City Council to lease certain municipal property located in the general harbor and Dock Street area to United States Yacht Shows, Inc. and Annapolis Boat Shows, Inc.,

bodies corporate, for a certain period of time in October 2006, subject to certain terms, provisions and conditions, for the purpose of conducting boat shows; and all matters relating to said lease.

Alderman Hammond moved to adopt O-4-02 on second reading. Seconded.

The Economic Matters Committee reported favorably on O-4-02.

The Finance Committee reported favorably on O-4-02.

The main motion CARRIED on voice vote.

Alderman Hammond moved to adopt O-4-02 on third reading. Seconded. CARRIED on voice vote.

O-5-02 For the purpose of authorizing the lease of certain City property known as 723 Second Street to Eastport Historical Committee, Inc.; and all matters relating to said lease.

Alderman Cohen moved to adopt O-5-02 on second reading. Seconded.

Alderman Fox moved to substitute the lease agreement as follows:

LEASE AGREEMENT

THIS LEASE AGREEMENT is made as of this _____ day of _____, 2001 by and between **ANNAPOLIS MARITIME MUSEUM , INC.**, a Maryland corporation (hereinafter called "Lessee") and the **CITY OF ANNAPOLIS**, a municipal corporation of the State of Maryland (hereinafter called "Lessor").

WHEREAS, Lessor of Annapolis owns the property known as McNasby's located at 723 Second Street in Annapolis, as more accurately described in a Deed recorded at Liber _____, folio _____ among the Land Records of Anne Arundel County, and all improvements located thereon; and

WHEREAS, Lessee desires to lease the building located on the aforementioned property from Lessor to house the Annapolis Maritime Museum; and

WHEREAS, Lessor desires to lease the building to Lessee for the purpose of locating the Museum therein; and

WHEREAS, the parties hereto wish to enter into a lease agreement setting forth their respective rights and obligations.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereby do mutually agree as follows:

1. Leased Premises: Lessor does hereby lease to Lessee the property consisting of the building and docking facilities located at 723 Second Street, situated, lying and being in the City of Annapolis Maryland (hereinafter called "the Premises") along with the non-exclusive right to use the grounds at that location. Lessor reserves to itself the right to use and occupy, and to allow others to use and occupy, the grounds located at 723 Second Street. Lessee shall not interfere with, obstruct or otherwise hinder Lessor's use and occupancy of those grounds. Lessor further reserves to itself the right to use and occupy, and to allow others to use and occupy, the docking facilities whenever those facilities are not used by Lessee, provided Lessor shall first give to Lessee reasonable prior notice of such use. The Premises do not include the public open space located at 723 Second

Street. The "grounds" and "docking facilities" areas intended to be the subject of use by Lessor are shown on the attached Exhibit 1, a drawing of the grounds, docking facilities and building referred to herein.

The Premises shall be leased in an "as is" condition, with all faults, and Lessor makes no representation or warranty with regard to habitability or condition of the Premises or with regard to its suitability for any particular use. Lessee has been informed that the Premises are subject to flooding and that such flooding may disrupt Lessor's use and occupancy of the building and/or cause a risk of injury to persons and/or damage to personal property located on the Premises. Lessee assumes the risk of any and all such disruptions, injuries and/or damage and hereby waives any and all claims against Lessor and, in their capacity as such, the officers, agents and employees thereof, from and against any and all claims, suits, actions, liability, judgments or damages for actual or alleged injury to persons, to the Premises or to other property (including loss of use of the Premises or other property whether or not such Premises or property is physically damaged or destroyed) in any way arising out of or through, or alleged to arise out of or through flooding of the Premises. Lessee shall not be entitled to any credit, abatement, or other reduction in the rent provided pursuant to this lease agreement based, in whole or in part, on a claim that Lessor's use or occupancy of the Premises was disrupted as a result of flooding. Notwithstanding the above language, Lessor shall remain liable for claims, suits, actions, liability, judgments and damages unrelated to the condition of the Premises arising from or related to negligence or intentional actions of its officers, agents and employees.

2. Term: This lease agreement shall be for an initial term of one (1) year and three (3) months commencing April 1, 2002 and terminating at 11:59 p.m. on June 30, 2003. Thereafter, this lease agreement may be extended for three (3) additional and consecutive terms of five (5) years each at the sole discretion of Lessor commencing 2014 March 1, 2003, March 1, 2008 and March 1, 2013, respectively on July 1, 2003, July 1, 2008 and July 1, 2013. This lease agreement shall terminate at the conclusion of the initial term without further action by Lessor unless Lessor shall, by ordinance resolution adopted March 1, 2003, grant the first additional five-year term. If so granted, this lease agreement shall terminate at the conclusion of the first additional term without further action by Lessor unless Lessor shall, by resolution adopted not later than March 1, 2008 grant the second additional five-year term. If so granted, this lease agreement shall terminate at the conclusion of the second additional term without further action by Lessor unless Lessor shall, by resolution adopted not later than March 1, 2013, grant the third additional five-year term.

3. Rent: Lessee shall pay to Lessor an annual rent in the amount of: (a) first year, \$7,500 for the period April 1, 2002 through June 30, 2003, payable in advance on the 1st day of each month beginning September 1, 2002 in equal monthly installments of \$750; (b.) second year, \$25,000 payable in advance on the 1st day of each month beginning July 1, 2003 in equal monthly installments of \$2,083.33; (c.) third year, \$35,000 payable in advance of the 1st day of each month beginning July 1, 2004 in equal monthly installments of \$2,916.66. Beginning in the fourth year of this lease agreement and every year thereafter, the annual rent shall be equal to 103% of the preceding year's annual rent payable in advance on the 1st day of each month beginning July 1 during that year in equal monthly installments equal to 1/12 of the annual rent for that year.

4. Right of Purchase: If, during the initial term or any additional term of this lease agreement, Lessor shall offer the Premises for sale by publishing a request for purchase and if Lessor shall receive a responsive bid to purchase the Premises, Lessee shall have the right to purchase the Premises upon the same terms and conditions as the highest responsive bid, provided Lessee shall, within ten (10) days of the receipt from the City written notice of the bid, notify Lessor in writing of its intention to purchase the Premises and provide to Lessor proof of Lessee's financial ability to purchase the Premises in such form as Lessor shall require.

5. Improvements to Premises and Grants: Lessee shall, at its sole cost and expense, perform all improvements to the Premises which are necessary for the Lessee to obtain all appropriate licenses and permits for the operation of its business at the Premises, including a City occupancy permit. Further, Lessee shall, at its sole cost and expense maintain the Premises in accordance with all applicable State, County and City laws, ordinances and regulations. Said maintenance shall include janitorial work. Furthermore, Lessee shall, at its sole cost and expense, maintain the interior and exterior of the building. Lessee shall not expand, modify or make improvements to the Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Any improvements to the Premises undertaken by Lessee shall be performed by licensed contractors. Lessee shall obtain all necessary permits to perform any improvements to the Premises. Lessee agrees that all such improvements shall become the property of Lessor when made, unless Lessee removes such improvements and restores the Premises to prior condition, and that Lessee shall be entitled to no reimbursement, setoff or reduction in the rental due hereunder as a credit for any such improvements.

In addition to the foregoing, Lessee intends to expend during the first year of this lease agreement, the sum of \$100,000 (either directly or through payments to Lessor) toward architectural and related fees for the design of museum facilities at the Premises. Lessee agrees that any and all architectural drawings and all similar and related work product generated with those funds shall become the property of Lessor and that Lessee shall be entitled to no reimbursement, setoff or reduction in the rental due hereunder as a credit for the expenditure of any such funds.

In addition to the foregoing, Lessee and Lessor shall cooperate with each other in the application for and in the expenditure of Federal, State and County grant monies (including but not limited to \$150,000 in-State grant monies approved for fiscal year 2002) intended for the purpose of improving, maintaining or operating the Premises or intended for activities at the Premises.

6. Use of Premises: The Lessee shall use and occupy the Premises for the sole purpose of operating the Annapolis Maritime Museum and any permitted subleased operation.

7. Sublet, Mortgage and Assignment: Neither the Premises nor any portion of the Premises, nor this lease agreement, or any interest in it be hypothecated or mortgaged by Lessee, and any attempted hypothecation or mortgaging of this lease agreement shall be of no force or effect, and shall confer no rights upon any mortgagee or pledgee.

Lessee will not assign this lease agreement or any part thereof without the prior written consent of Lessor, which may consent to or refuse to consent to any such assignment as Lessor, in its sole discretion, shall deem appropriate. The prohibition stated herein shall not apply to a change of name or legal organization by Lessee.

In the event that Lessee shall become incompetent, bankrupt, or insolvent, or should a guardian, trustee, or receiver be appointed to administer Lessee's business or affairs, neither this lease agreement nor any interest here shall become an asset of such guardian, trustee or receiver, and in the event of the appointment of any such guardian, trustee, or receiver, this lease agreement shall immediately terminate and end.

Lessee may sublet not more than 50% of the Premises, provided Lessee shall notify Lessor of its intention to sublet the Premises and provide Lessor with a copy of any sublease agreement not later than thirty (30) days prior to the effective date of any such sublease. A failure by Lessee to provide Lessor such notice and sublease agreement as provided herein shall constitute a material breach of this lease agreement. Lessee shall include among its subtenants at least one seafood service use. All subtenants' uses shall be uses permitted by the applicable zoning regulations.

8. Maintenance of The Premises: Lessee shall be solely responsible for the maintenance of said Premises and shall keep in good repair all improvements located therein. In addition, the Lessee assumes responsibility for maintenance of the Premises and shall police, light and maintain the Premises in a clean, safe and secure manner. Lessee shall be responsible for the maintenance and operation of all building systems. Lessor agrees to cut and maintain the grass areas located on the grounds.

9. Snow and Ice Removal: Lessee shall contract for the removal of all snow and ice from the stairs, sidewalks, docking facilities, and parking areas located on the Premises, it being understood by the parties that Lessor shall have no obligation or duty with regard to the same.

10. Security: Lessee hereby assumes sole responsibility and risk associated with the security of the building and with its use of the docking facilities, it being understood by the parties that the Lessor shall have no obligation or duty with regard to same.

11. Damage to Premises: If, during the term of this lease agreement, the Premises shall be damaged by fire, or other casualty, excluding flooding, not the fault of the Lessee, its officers, or its employees, then the rents and service charges herein reserved shall be abated pending the restoration of said Premises, in proportion to the extent to which the same shall be rendered untenable. It shall be the responsibility of Lessor to restore such Premises within a reasonable time but only to the condition the same was/were in at the time possession thereof was originally delivered to Lessee, ordinary wear and tear excepted; and it shall be the responsibility of the Lessee to restore its own fixtures and equipment.

12. Indemnification: Lessee shall, at its sole expense, fully indemnify, defend and hold harmless Lessor, and in their capacity as such, the officers, agents and employees thereof, from and against any and all claims, suits, actions, liability, judgments or damages for actual or alleged injury to persons, to the building Premises or to other property (including loss of use of the building or docking facilities whether or not such building or docking facilities is physically damaged or destroyed), in any way arising out of or through, or alleged to arise out of or through: (1) the acts or omissions of Lessee or its officers, agents, employees, or contractors or to which act or omission of Lessee or its officers, agents, employees or contractors in any way contribute; or (2) Lessee's use of the Premises.

Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by or through their own legal counsel at Lessee's sole expense. Such participation shall not under any circumstances relieve Lessee from its duty of defense against liability or of paying any judgment entered against such party.

Any claim for injury to person or property based in part or in whole on an allegation of insufficiency or negligence in the condition of the building, flooding within the building, snow or ice in the areas set forth in paragraph 9 of this lease agreement or the security at the building shall be considered to be among the claims within the scope of this section.

13. Insurance: As a part of the indemnification provided by the preceding section, but without limiting the foregoing, Lessee shall file with Lessor concurrent with the execution of this Agreement, and at all times thereafter maintain in full force and effect at Lessee's sole expense, an acceptable policy or policies of liability insurance, including comprehensive general liability insurance. The policy or policies shall name as primary or additional insured Lessor, and in their capacity as such, the officers, agents and employees thereof. Said policy of insurance shall be in the minimum single limit amount of one million dollars (\$1,000,000.00) per occurrence. The insurance policy shall insure against the types of liabilities covered by the indemnification and hold harmless provisions above.

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.

The certificate of insurance for such policies shall be maintained by Lessee in full force and effect during the entire term of this lease agreement and any renewal thereof. Each policy of insurance 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, and 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 of Annapolis Central Services Director and that such notice shall be transmitted postage prepaid, with return receipt requested.

In addition to the foregoing, Lessee shall insure against any damage that may occur to improvements or personal property located in the building by Lessee or by any other person at Lessee's request during Lessee's occupancy or use of the building. Lessee hereby assumes the risk of any and all damages, loss, theft or casualty of every nature, type and description to any such improvements or personal property.

14. Permits: Lessee shall be solely responsible for the acquisition of any and all permits and any other items necessary for the use of the Premises. Lessor makes no warranties or assurances regarding the availability of necessary permits nor the legality of Lessee's proposed use of the Premises. Lessee acknowledges that, as a result of the Premises' location in the floodplain, additional permitting requirements may apply to Lessee's use and occupancy of the Premises.

15. Removal of Personal Property: At the end of Lessee's tenancy, Lessee shall promptly remove, at its own expense, any and all personal property placed on the Premises by Lessee or by other persons at the request or with the permission of Lessee. Any such personal property not removed by Lessee at the end of the lease agreement shall become the property of Lessor.

16. Telecommunications Build-Out: Lessee shall assume all expenses related to any telecommunications build-out of the Premises including but not limited to telephone, telefax, computer, cable installation, it being understood by the parties that Lessor shall have no obligation or duty with regard to same.

17. Utility Expenses: Lessee shall have all utilities (gas, electric, telecommunications, heating, plumbing, water, etc.) at the Premises placed in an account bearing Lessee's name and shall be responsible for the payment of all expenses related to all such utilities, it being understood by the parties that lessor shall have no obligation or duty with regard to same.

18. Default:

(a) **Rental or Other Payments:** In the event that Lessee shall be in default of any payment of rent or other payment due to Lessor under the terms of this lease agreement, in whole or in part, for ten (10) days or more, Lessor may distrain therefor; and if said rent or other payment, in whole or in part shall be in arrears and unpaid for the period of fifteen (15) days, then Lessor may, in its sole discretion, direct Lessee to cease and desist any and all activities at the Premises until all such arrearage is paid up in full. Further, if Lessee shall for a period of fifteen (15) days after written notice from Lessor fail to comply with any of the conditions of this lease agreement, including failure to timely pay any rent or other payment due hereunder, then Lessor may re-enter upon the Premises without further form or process of law, by force or otherwise, without being liable to any prosecution or damages therefor and without other notice or previous demand, and such re-entry shall constitute a termination of Lessee's right to occupy the Premises.

No such recovering possession of the Premises shall deprive Lessor of any other action or claim against Lessee for possession, for rent or for damages.

(b) **Non-Monetary Default:** In the event that Lessee shall be in default in the performance of any term or condition agreed to be kept and performed by Lessee, other than as described in subparagraph 15 (a), and said default shall not be cured to the satisfaction of Lessor within 60 days of written notice by to Lessee to cure same (which 60 days may be extended by Lessor up to an additional 60 days upon proof that Lessee has made substantial efforts to cure such default), then in that event, Lessor may terminate and end this lease agreement, immediately, and Lessor may proceed to enforce such termination through process of law.

(c) **Attorneys fees, late charges:** In the event of a judicial determination of default hereunder by Lessee or in the event of any breach by Lessee of any term of this lease agreement, then in addition to all other sums due by Lessee under the terms of this lease agreement, Lessee shall pay Lessor as Additional Rent hereunder: (i) reasonable attorneys fees not less than \$1,000 ; (ii) plus, Late Fees equal to 5% of any unpaid amounts accrued hereunder.

19. Benefit and Burden: The provisions of this lease agreement shall be binding upon and inure to the benefit of the parties hereto and each of their respective representative, successors and assigns.

20. Governing Law: This lease agreement shall be governed and construed in accordance with the laws of the State of Maryland.

21. Captions: The captions at the beginning of each section of the lease agreement are asserted only as a matter of convenience or reference purposes.

22. Entire Agreement: This lease agreement contains the entire agreement between the parties hereto and any agreement (written or oral) hereafter or heretofore made shall not operate to change, modify, terminate or discharge this lease agreement in whole or in part unless such agreement is reduced to writing and signed by each of the parties hereto.

23. Severability: The provisions of this lease agreement are severable and if any provision, clause, sentence, section or part hereof is held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such paragraph shall be stricken and the balance shall remain in tact provided Lessee has the right to remain in possession of the premises at the rent as set forth herein.

24. Notices: Any and all notices required to be sent under this lease agreement shall be sent as follows:

Lessor: City of Annapolis, Central Services Director
160 Duke of Gloucester Street
Annapolis, Maryland 21401

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

Lessee: EASTPORT HISTORICAL COMMITTEE, INC.
Peg Wallace, Chairman
P.O. Box 3088
Annapolis, Maryland 21403

25. Authorization: This lease agreement is authorized by Ordinance O-5-02.

IN WITNESS WHEREOF, the parties have executed this lease agreement the day and year first above written:

ATTEST:

LESSEE:

ANNAPOLIS MARITIME MUSEUM, INC.

By: _____ By: _____
Name: _____ Name: _____
Title: _____ Title: _____

ATTEST:

LESSOR:

CITY OF ANNAPOLIS

DEBORAH HEINBUCH, CMC/AAE
CITY CLERK

BY: _____
ELLEN O. MOYER, MAYOR

Approved as to form and legal sufficiency:

Paul Garvey Goetzke
City Attorney

Date

Seconded. CARRIED on voice vote.

C Alderman Tolliver moved to strike from the lease, section 4. Right of Purchase:
Seconded. DEFEATED on voice vote.

C Alderman Tolliver moved to amend the lease as follows:

Section 2. **Term**: *strike* "2014March 1, 2003, March 1, 2008 and March 1, 2013,
respectively" Seconded. CARRIED on voice vote.

C Alderman Cohen moved to amend the lease as follows:

Section 6. **Use of Premises**: *add* "Museum shall operate seafood carry-out as
accessory use to which is reflected in current zoning." Seconded.

-Alderman Hammond moved to amend the amendment as follows:

strike, from section 7. **Sublet, Mortgage and Assignment**: "Lessee shall include
among its subtenants at least one seafood service use. All subtenants' uses shall
be uses permitted by the applicable zoning regulations."; and,

add, to section 6. **Use of Premises**: "Lessee shall include at least one seafood
service use." Seconded.

-Alderman Tolliver moved to amend Alderman Cohen's amendment as follows:

Section 6. **Use of Premises**: *add* Museum shall provide for a seafood carry-out
as reflected in current zoning." Seconded.

-Alderman Hammond withdrew her amendment to the amendment.

-Alderman Tolliver's amendment to Alderman Cohen's amendment CARRIED on
voice vote.

C Alderman Cohen moved to amend the lease agreement as follows:

Section 25. Authorization: *strike* "O-41-01"; *add* "O-5-02". Seconded.

Alderman Cohen withdrew his amendment.

C Alderman Tolliver moved to amend the lease agreement as follows:

Section 3. Rent: Lessee shall pay to Lessor an annual rent in the amount of: (a) first year, ~~\$7,500~~ \$11,250 for the period April 1, 2002 through June 30, 2003, payable in advance on the 1st day of each month beginning ~~September~~ April 1, 2002 in equal monthly installments of \$750;

Seconded. CARRIED on voice vote.

C Alderman Fox moved to adopt several technical corrections to the lease agreement as follows: On page 1 of the lease agreement, paragraph 1, line 2, *strike* "2001"; *add* "2002"; Section 3. Rent: following the words "Lessee shall pay to Lessor" *strike* "an annual"; Section 4. Right of Purchase: following the words "ten (10) days of the receipt from the City" *add* "of"; and, following the words "as Lessor shall" *add* "reasonably"; Section 7. Sublet, Mortgage and Assignment: following the words "or any interest in it" *add* "may"; Section 18. Default: (c) following the words "in the event of" *add* "a judicial determination"; Section 24. Notices: following the word "Lessee:" *strike* "EASTPORT HISTORICAL COMMITTEE, INC." *add* "Annapolis Maritime Museum, Inc."; Seconded. CARRIED on voice vote.

C Alderman Cohen moved amend No. 1 of the lease agreement as follows:

strike "2. Term: This lease agreement shall be for an initial term of one (1) year and three (3) months commencing April 1, 2002 and terminating at 11:59 p.m. on June 30, 2003. Thereafter, this lease agreement may be extended for three (3) additional and consecutive terms of five (5) years each at the sole discretion of Lessor commencing on July 1, 2003, July 1, 2008 and July 1, 2013. This lease agreement shall terminate at the conclusion of the initial term without further action by Lessor unless Lessor shall, by ordinance resolution adopted March 1, 2003, grant the first additional five-year term. If so granted, this lease agreement shall terminate at the conclusion of the first additional term without further action by Lessor unless Lessor shall, by resolution adopted not later than March 1, 2008 grant the second additional five-year term. If so granted, this lease agreement shall terminate at the conclusion of the second additional term without further action by Lessor unless Lessor shall, by resolution adopted not later than March 1, 2013, grant the third additional five-year term."; and,

add, "Section 2. Term. This lease agreement shall be for an initial term of 15 months commencing April 1, 2002 and terminating at 11:59 p.m. on June 30, 2003. Thereafter, this lease agreement may be extended by Lessee for up to five (5) additional and consecutive terms of five (5) years each. This lease agreement shall terminate at the conclusion of any term without further action by either party unless Lessee notifies Lessor of Lessee's election to extend the term of this Lease Agreement for an additional five (5) year period. Such notification shall be made on or before sixty (60) days from the end of the initial term or sixty (60) days before the end of any subsequent five (5) year term."

Seconded. A ROLL CALL vote was taken:

YEAS: Mayor Moyer, Aldermen Hoyle, Kelley, Carter, Fox, Cohen
NAYS: Aldermen Hammond, Tolliver, Cordle
CARRIED: 6-3

C Alderman Cohen moved amendment No. 2 to the lease agreement as follows:

add, "Section 4.5 Option to Purchase:

Lessee shall have the option, during the term of this lease Agreement, to purchase the Premises from the Lessor on the terms and conditions stated in the attached Exhibit 2 and at a sale price determined as the Fair Market Value of the Premises at the time the option to purchase is exercised by Lessee. Lessee shall notify Lessor, in writing, of its intention to exercise its option to purchase. Within ten (10) days of such notification, Lessor and Lessee shall each designate an appraiser and the two appraisers shall designate a third appraiser. The appraisal prepared by the third appraiser shall be designated as the Fair Market Value of the Premises for purposes of establishing the sale price of the Premises under this Option to Purchase. Cost of the appraisal work shall be shared equally by the Lessee and Lessor. Lessor shall grant a credit to Lessee against the sale price for the costs of improvements made by Lessee to the Premises and grounds." Seconded.

-Alderman Tolliver moved to amend the amendment as follows:

following the words "improvements made by Lessee to the Premises and grounds," *add* "exclusive of any improvements made with government funds." Seconded. A ROLL CALL vote was taken:

YEAS: Aldermen Hammond, Tolliver, Cordle, Fox
NAYS: Mayor Moyer, Aldermen Hoyle, Kelley, Carter, Cohen
DEFEATED: 5-4

-Alderman Tolliver moved to amend the amendment as follows:

following the words "costs of improvements made by Lessee to the Premises and grounds." *add* "Any purchase of the Premises by the Lessee pursuant to this paragraph shall be subject to all applicable provisions of the City Charter, the City Code and State law."

Seconded. CARRIED on voice vote.

- Alderman Cohen moved to amend the amendment as follows:

following the words "costs of improvements made by Lessee to the Premises and grounds." *Add* "The credit provided herein shall exclude improvements funded by Lessor." Seconded. CARRIED on voice vote.

- Alderman Tolliver moved to amend the amendment as follows:

following the words "Lessee shall have the option, during the term of this lease Agreement, to purchase the Premises from the Lessor" *strike* "on the terms and conditions stated in the attached Exhibit 2 and"

Seconded. CARRIED on voice vote.

Alderman Cohen moved to adopt amendment No. 2 as amended. Seconded. A ROLL CALL vote was taken:

YEAS: Mayor Moyer, Aldermen Hoyle, Kelley, Cordle, Carter, Fox, Cohen
NAYS: Aldermen Hammond, Tolliver
CARRIED: 7-2

C Alderman Cohen moved amendment No. 3 to the lease agreement as follows:

Section 4. **Right to Purchase:** following the words "purchase the Premises in such form as Lessor shall require." *add* "Lessor shall grant a credit to Lessee against the sale price for costs of improvements made by Lessee to the Premises and grounds." Seconded.

-Alderman Hammond moved to amend the amendment as follows:

following the words "Lessor shall grant a credit to Lessee against the sale price for costs of improvements made by Lessee to the Premises and grounds." *add* "The credit provided herein shall exclude improvements funded by Lessor." Seconded. CARRIED on voice vote.

Alderman Cohen moved to adopt amendment No. 3 as amended. Seconded. CARRIED on voice vote.

C Alderman Cohen moved amendment No. 4 to the lease agreement as follows:

Section **18. Default:** (b) Non-monetary Default: following the words "termination through process of law." *add* "Notwithstanding the sixty (60) day time limit specified herein to cure any default, Lessor agrees that it shall not terminate or end this Lease Agreement so long as Lessee has engaged in reasonable efforts to cure such default and so long as Lessee is continuing to pursue such efforts." Seconded.

Alderman Cohen withdrew his motion.

C Alderman Cohen moved amendment No. 5 to the lease agreement as follows:

Section **7. Sublet, Mortgage and Assignment:**

Should a food service company sublet a portion of the Premises and subsequently cease conducting its business from the Premises, Lessee will make every effort to sublet a new food service tenant and maintain a continuity of service, but Lessee shall not be in default nor shall it be considered a material breach of this Lease Agreement should Lessee be unable to sublet a portion of the premises to a successor food service company. Seconded.

Without objection, the following amendment to the amendment CARRIED on voice vote:

following the words "to a successor food service company." *add* "provided tenant demonstrates continuous good faith efforts to locate a substitute seafood services subtenant. In any event, it shall be considered a material breach of this agreement if such a substitute subtenant shall not be procured within eighteen (18) months."

Alderman Fox moved to adopt amendment No. 5 as amended. Seconded. CARRIED on voice vote.

C Alderman Cohen moved to substitute the revised exhibit 1, dated March 11, 2002 for the exhibit dated March 6, 2002, previously attached to the lease agreement.

Seconded. CARRIED on voice vote.

C Alderman Cohen moved to amend the lease agreement as follows:

Section **5. Improvements to Premises and Grants:** following the words "State, County and City laws, ordinances and regulations." strike "said maintenance shall include janitorial work." and, *add*

Section **8. Maintenance of the Premises:** following the words " Lessee shall be solely responsible for the maintenance of said premises and shall keep in good repair all improvements located therein" *add* "Such maintenance shall include, but shall not be limited to, all janitorial work, HVAC, plumbing, electric and related items. Maintenance shall not include repairs to the Premises resulting from causes originating off of the Premises unless Lessee shall have assumed responsibility for such maintenance elsewhere in this lease agreement."

Seconded. CARRIED on voice vote.

C Alderman Cohen moved to adopt O-5-02 as amended on second reading. Seconded. A ROLL CALL vote was taken:

YEAS: Mayor Moyer, Aldermen Hoyle, Kelley, Carter, Fox, Cohen
NAYS: Aldermen Hammond, Tolliver, Cordle
CARRIED: 7-3

Alderman Fox moved to adopt O-5-02 amended on third reading. Seconded. CARRIED on voice vote.

O-11-02 For the purpose of allowing trailers to be parked, while attached or detached to a motor vehicle, upon any public street, lane or alley in Annapolis for no more than seven consecutive days; providing that certain small trailers, less than five feet in width and ten feet in length, be excluded from this provision; allowing the towing of trailers parked in violation of Annapolis City Code Section 12.20.110; and matters generally relating to said parked trailers.

Alderman Cohen moved to adopt O-11-02 on first reading. Seconded. CARRIED on voice vote.

Referred to Public Safety Committee and the Maritime Advisory Board

O-12-02 For the purpose of defining injury or defacement of a building, structure or object with a motivation of racial or religious hatred or animosity; and matters generally relating to said definition.

Alderman Carter moved to adopt O-12-02 on first reading. Seconded. CARRIED on voice vote.

Referred to Public Safety Committee

O-15-02 For the purpose of conveying, by quit claim deed, whatever rights, title and interest the City has in certain real property located in the City of Annapolis to Annapolis MPK Venture, L.L.C.; providing for the property to be sold at private sale, authorizing Annapolis MPK Venture, L.L.C. to pursue zoning permits etc. relating to the property before the interest, if any, hereby conveyed is perfected; and all matters relating to rights, title and interest in such property.

Alderman Fox moved to adopt O-15-02 on first reading. Seconded. CARRIED on voice vote.

Referred to Finance Committee

RESOLUTIONS

R-4-02 For the purpose of designating Tallinn, Estonia as a sister city for the City of Annapolis; and all matters relating to said sister city designation.

Alderman Carter moved to adopt R-4-02 on second reading. Seconded. CARRIED on voice vote.

R-5-02 For the purpose of authorizing the filing of an application with the Mass Transit Administration of the Maryland Department of Transportation for a Section 5307, 5311 and/or 5307 grant under the Federal Transit Act.

Alderman Fox moved to adopt R-5-02 on second reading. Seconded. CARRIED on voice vote.

At 10:35 p.m., Mayor Moyer requested Alderman Hammond to preside over the meeting during her absence.

ANNEXATION PETITIONS

O-13-02 For the purpose of establishing a zoning classification of R2, Single-Family Residence District for the property located on Bay Front Drive lying along the waterfront between Bembe Beach property earlier annexed to the north and the BayWoods complex to the south and west; and Chesapeake Bay/mouth of Severn River east, known as Bembe Beach, contiguous to the existing boundary of the City of Annapolis; and all matters relating to said zoning map amendment.

Alderman Fox moved to adopt O-13-02 on first reading. Seconded. CARRIED on voice vote.

Referred to Planning Commission

O-14-02 For the purpose of establishing a zoning classification of BCE, Business Corridor Enhancement District for the property located at 40 and 42 Hudson Street, known as Annapolis Business Plaza Condominium, contiguous to the existing boundary of the City of Annapolis; and all matters relating to said zoning map amendment.

Alderman Carter moved to adopt O-14-02 on first reading. Seconded. CARRIED on voice vote.

Referred to Planning Commission

R-9-02 For the purpose of annexing into the boundaries of the City of Annapolis certain property located on Bay Front Drive lying along the waterfront between Bembe Beach property earlier annexed to the north and the BayWoods complex to the south and west; and Chesapeake Bay/mouth of Severn River east, contiguous to the existing boundary of the City of Annapolis.

Alderman Fox moved to adopt R-9-02 on first reading. Seconded. CARRIED on voice vote.

Alderman Tolliver moved that the applicants work with the Public Works and Planning and Zoning Departments to provide the necessary studies for proper consideration of this Petition. Seconded. CARRIED on voice vote.

R-10-02 For the purpose of annexing into the boundaries of the City of Annapolis certain property located at 40 and 42 Hudson Street, known as Annapolis Business Plaza Condominium, contiguous to the existing boundary of the City of Annapolis.

Alderman Fox moved to adopt R-10-02 on first reading. Seconded. CARRIED on voice vote.

Alderman Tolliver moved that the applicants work with the Public Works and Planning and Zoning Departments to provide the necessary studies for proper consideration of this Petition. Seconded. CARRIED on voice vote.

At 10:45 p.m., Mayor Moyer resumed the duties of the Chair.

BUSINESS AND MISCELLANEOUS

C Finance Committee Meeting Recommendations dated February 21, 2002

Alderman Fox moved to accept the Finance Committee Recommendations for Action dated February 21, 2002. Seconded. CARRIED on voice vote.

C Payment of Monthly Bills

Alderman Carter moved to pay the monthly bills. Seconded. CARRIED on voice vote.

C Appointment

Alderman Hammond moved to approve the Mayor's re-appointment of L. Robert Marchand for the Ethics Commission to February 28, 2005. Seconded. CARRIED on voice vote.

Upon motion duly made, seconded and adopted, the meeting was adjourned at 10:56 p.m.

Deborah Heinbuch, CMC/AE
City Clerk