

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE AMENDING ORDINANCE #111-02, WHICH ALLOWED FOR THE LEASE AGREEMENT FOR THE SMALL BOAT MARINA COMMONLY REFERRED TO AS THE "LORAIN SMALL BOAT BASIN" WITH THE LORAIN SAILING & YACHT CLUB.

Whereas, The City of Lorain has entered into a Lease Agreement with the Lorain Port Authority and The Lorain Sailing & Yacht Club as authorized by Ordinance No. 111-02 ; and

Whereas, The City of Lorain and the Lorain Sailing & Yacht Club are looking to revise the lease land description to exclude the navigable water between their dock areas/piers with the Intent of reducing the property size upon which taxes are calculated for The Lorain Sailing & Yacht Club.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LORAIN, STATE OF OHIO:

SECTION I. That Ordinance No. 111-02 passed by Lorain City Council on June 10, 2002 is hereby amended by the replacement of Exhibit "A", Legal Description, attached to the Lease Agreement between the City of Lorain, Lorain Port Authority and Lorain Sailing & Yacht Club. Said Lease Agreement sets forth the terms and conditions, with modifications, of the existing leasehold rights.

SECTION II. That it is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance, were adopted in an open meeting of this Council and that all deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public and in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

SECTION III. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_, 2014

\_\_\_\_\_  
PRESIDENT OF COUNCIL

ATTEST: \_\_\_\_\_, CLERK

\_\_\_\_\_  
MAYOR

APPROVED: \_\_\_\_\_, 2014

EXHIBIT 'A'  
(Legal Description)

Situated in the City of Lorain, County of Lorain and State of Ohio. Being known as part of Original Black River Township Lot No. 1, Tract 1 and more definitely described as follows:

Beginning at a point being the intersection of the Southwesterly line of Alabama Avenue and the Northeasterly line of Lakeside Avenue. Thence South 60° 02' 04" West, a distance of 136.91 feet to a drill hole in a concrete marker. Said drill hole formerly was designated as the Principal Place of Beginning at a Southeasterly corner of land conveyed to the United States Coast Guard Life Saving Reservation as recorded in Volume 105, Page 163 of Lorain County Deed Records. Thence North 47° 40' 36" West, a distance of 77.64 feet to a point. Thence North 65° 18' 36" West, a distance of 77.64 feet to a point. Thence North 65° 18' 36" West, a distance of 124.82 feet to an iron pin found and being the Principal Place of Beginning for the land herein described.

Thence South 47° 43' 40" West, a distance of 57.77 feet to an iron pin found.

Thence South 15° 09' West, a distance of 200.85 feet to the existing dock line and passing thru an iron pin found 4.47 feet Southwesterly of the iron pin found on the previously mentioned course.

Thence North 76° 22' 10" West along the existing dock line, a distance of 212.14 feet.

Thence North 15° 53' 34" East along the existing dock line, a distance of 63.19 feet to a point.

Thence South 75° 54' 54" East, a distance of 126.39 feet to the existing Boat Basin line.

Thence North 14° 22' 42" East along the existing Boat Basin line, a distance of 39.90 feet to a point.

Thence North 75° 32' 34" West, a distance of 105.95 feet to a point.

Thence North 14° 36' 14" East, a distance of 59.71 feet to a point.

Thence South 75° 20' 39" East, a distance of 106.13 feet to the existing Boat Basin line.

Thence North 14° 22' 34" East along the existing Boat Basin line, a distance of 39.10 feet to a point.

Thence North 75° 07' 03" West, a distance of 108.04 feet to a point.

Thence North 14° 31' 56" East, a distance of 26.96 feet to the existing Boat Basin line.

Thence North 75° 22' 12" West along the existing Boat Basin line, a distance of 46.06 feet to a point.

Thence South 13° 48' 16" West, a distance of 139.40 feet to a point.

Thence North 75° 51' 54" West, a distance of 73.99 feet to a point.

Thence North 13° 39' 50" East, a distance of 139.21 feet to the existing Boat Basin line.

Thence North 74° 33' 21" West along the existing Boat Basin line, a distance of 48.93 feet to a point.

Thence South 14° 26' 19" West, a distance of 174.60 feet to a point on the existing Boat Basin line.

Thence South 62° 55' 34" East along the existing Boat Basin line, a distance of 98.35 feet to an angle point on the existing Boat Basin line.

Thence South 26° 27' 15" West, a distance of 36.06 feet to an angle point on the existing dock line.

Thence North 76° 22' 10" West, a distance of 4.45 feet along the existing dock, to an angle point on the existing Dock line.



Thence North  $63^{\circ} 27'$  West, along the existing dock line, a distance of 168.00 feet to a point.

Thence North  $32^{\circ} 39'$  East, a distance of 45.50 feet to a point.

Thence North  $76^{\circ} 25'$  East, a distance of 23.70 feet to a point.

Thence North  $14^{\circ} 05'$  East, a distance of 151.55 feet to a point.

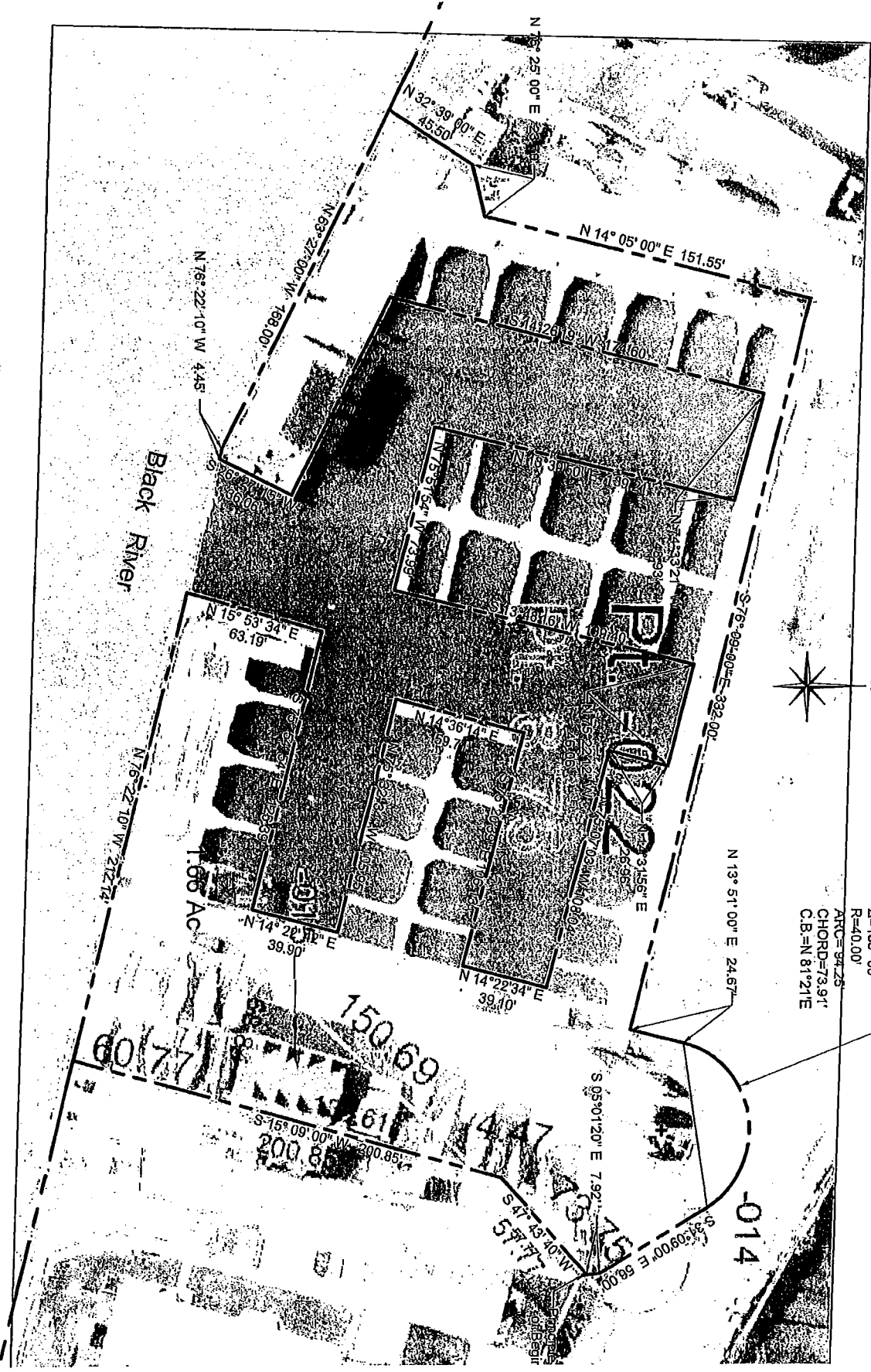
Thence South  $76^{\circ} 09'$  East, a distance of 332.00 feet to a point.

Thence North  $13^{\circ} 51'$  East, a distance of 24.67 feet to a point of curve.

Thence in the arc of curve deflecting to the right and having a radius of 40.00 feet and a central angle of  $135^{\circ} 00'$ ; a chord of 73.91 feet bearing North  $81^{\circ} 21'$  East, a distance of 94.25 feet to a point of tangency.

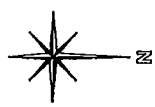
Thence South  $31^{\circ} 09'$  East, a distance of 56.00 feet to a point.

Thence South  $5^{\circ} 01' 20''$  East, a distance of 7.92 feet to the Principal Place of Beginning, embracing an area of 1.66 acres be the same more or less.

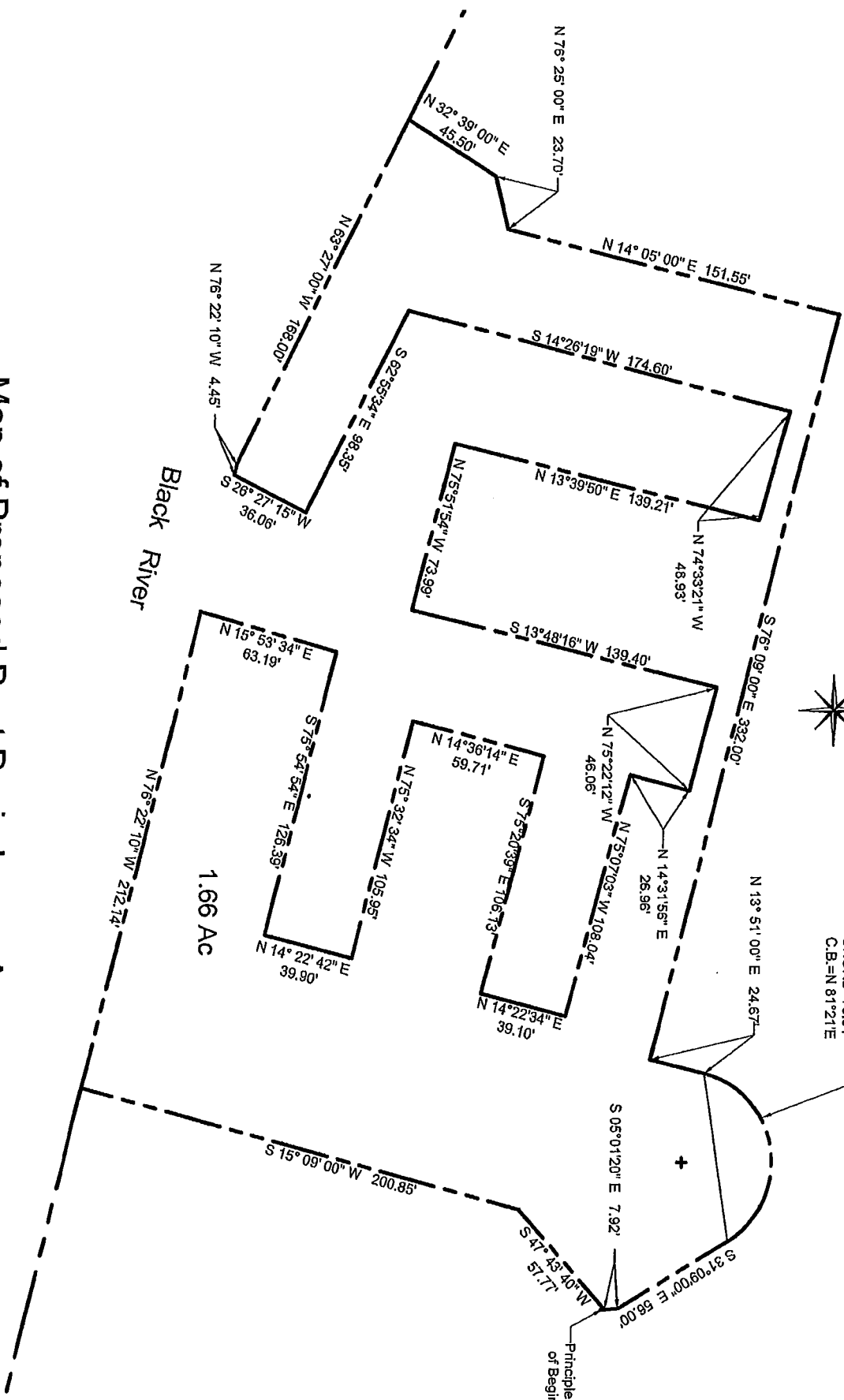


$A=135^{\circ}00'$   
 $R=40.00'$   
 $ARC=94.23'$   
 $CHORD=73.91'$   
 $C.B.=N 81^{\circ}21'E$

**Map of Proposed Boat Basin Lease Area**  
 Part of Black River Township, Original Lot No. 1, Tract No. 1  
 City Of Lorain, Lorain County, Ohio  
 Scale 1"=60'-0"



A=135° 00'  
R=40.00'  
ARC= 94.25'  
CHORD=73.91'  
C.B.=N 81° 21' E



Black River

1.66 Ac

Principle  
of Beginning

Map of Proposed Boat Basin Lease Area  
Part of Black River Township, Original Lot No. 1, Tract No. 1  
City Of Lorain, Lorain County, Ohio  
Scale 1"=60'-0"

5/15/02 \*FINAL LEASE

LEASE AGREEMENT

This AGREEMENT is made and entered into as of this 25<sup>th</sup> day of June, 2002, by and between the CITY OF LORAIN, OHIO, Grantor, whose address is Lorain City Hall, 200 West Erie Avenue, Lorain, Ohio 44052, the owner of the real property, (hereinafter referred to as Grantor, Owner or "Original Lessor"), and the LORAIN PORT AUTHORITY, whose address is 422 Broadway, Lorain, Ohio 44052, Grantee or "Original Lessee" and was used as an instrumentality by the City of Lorain, Ohio with respect to this real property and organized pursuant to the provisions of Chapter 4582 of the Ohio Revised Code, and THE LORAIN SAILING & YACHT CLUB, INC., a non-profit corporation, whose address is P.O. Box 697, Lorain, Ohio 44052 (hereinafter referred to as "Lessee" "Sublessee" or "Subsequent Lessee").

In consideration of the mutual undertakings of the parties, as set forth herein, it is agreed to by and between the parties, that a certain modification of existing contractual leasehold rights and interests shall occur as follows:

1. PREMISES: The City of Lorain, Ohio and the Lorain Port Authority acting as Lessor and as "original Lessee" and an instrumentality as used by the City of Lorain, Ohio, and acting through its respective and authorized officers and the Lorain Port Authority acting in its capacity as agent of and on behalf of the City of Lorain, Ohio, and in consideration of the rents and covenants herein contained, by said Lessee/Sublessee/Subsequent Lessee paid and to be paid and performed hereunder, hereby covenants with and leases unto THE LORAIN SAILING & YACHT CLUB, INC. that certain small boat marina commonly referred to as the "Lorain Small Boat Basin", hereinafter called the "Leased Premises", the same being more particularly described in the legal description of the Premises set forth on Exhibit "A" attached hereto and made a part hereof.

2. TERM: The duration of this Lease shall be as follows: The term of this Lease shall commence on the 1st day of July, 2002 and shall continue until the 31st day of December, 2027.

OPTIONS TO RENEW FOR 5 YEAR TERM: THE LORAIN SAILING & YACHT CLUB, INC. shall be provided two successive options to renew said lease for a period of five years each. These options shall be contingent upon the full and faithful performance of each and every term as set forth in this agreement and any subsequent written modifications to the same. The first 5 year renewal shall commence on January 1, 2028 and shall run until the 31st day of December, 2033. The second 5 year renewal shall commence on January 1, 2034 and shall run until the 31st day of December, 2039. Notice of the exercise of either option period shall be by a written notice delivered to both the Director of Public Services, City of Lorain, Ohio and the Executive Director of the Lorain Port Authority at least six months prior to the expiration of the relevant lease term.

3. The real property described herein and all improvements made upon and made to said real property during the term of this lease shall be leased by the Lorain Port Authority to the THE LORAIN SAILING & YACHT CLUB, INC. upon the terms and conditions expressed herein.

4. The Lorain Port Authority is granted exclusive rights by the Grantor to lease this real property to the THE LORAIN SAILING & YACHT CLUB, INC. as is set forth and contained herein. All previous agreements of any kind relating to any leasehold or property interests of the THE LORAIN SAILING & YACHT CLUB, INC. fna Lorain Sailing Club in the said real property are forever amended, modified and restated as set forth exclusively herein.

5. A. The City of Lorain, Ohio does hereby enter into this contract with the LORAIN PORT AUTHORITY lawfully and in keeping with the purposes of OH. Const. Art. VIII, § 13 ECONOMIC DEVELOPMENT, which reads in part as follows: "To create or preserve jobs and employment opportunities, to improve the economic welfare of the people of the state, to control air, water, and thermal pollution, or to dispose of solid waste, it is hereby determined to be in the public interest and a proper public purpose for the state or its political subdivisions, taxing districts, or public authorities, its or their agencies or instrumentalities, or corporations not for profit designated by any of them as such agencies or instrumentalities, to acquire, construct, enlarge, improve, or equip, and to sell, lease, exchange, or otherwise dispose of property, structures, equipment, and facilities within the State of Ohio for industry, commerce, ... and lending of aid and credit shall not be subject to the requirements, limitations, or prohibitions of any other section of Article VIII, or of Article XII, Sections 6 and 11, of the Constitution, provided that moneys raised by taxation shall not be obligated or pledged for the payment of bonds or other obligations issued or guarantees made pursuant to laws enacted under this section. ... The powers herein granted shall be in addition to and not in derogation of existing powers of the state or its political subdivisions, taxing districts, or public authorities, or their agencies or instrumentalities or corporations not for profit designated by any of them as such agencies or instrumentalities. ...". OH. CONST Art. VIII, § 13, ECONOMIC DEVELOPMENT Operating under the authority of Article VIII of the Ohio Constitution, the Lorain Port Authority under R.C. § 4582.06 (F) has a greater degree of discretion in contractual formation; bidding statutes do not need to be followed when operating under programs, projects, or deals involving an application of OH CONST Art. VIII, § 13, ECONOMIC DEVELOPMENT. R.C. § 4582.06(F)(1) reads as follows: "Any purchase, exchange, sale, lease, conveyance of other interests in, or other contract with a person or governmental entity that pertains to the acquisition, construction, maintenance, repair, furnishing, equipping, or operation of any real or personal property, or any combination thereof, related to, useful for, or in furtherance of an activity contemplated by Section 13 or 16 of Article VIII, Ohio Constitution, shall be made in such manner and subject to such terms and conditions as may be determined by the board of directors in its discretion." The Lorain Port Authority agrees to lease to the THE LORAIN SAILING & YACHT CLUB, INC. according to this lease's terms and conditions the real property as has been leased to it by the City of Lorain, Ohio.

B. The City of Lorain, Ohio does hereby authorize the modification of the leasehold interest previously entered and the lease as is set forth herein. The City of Lorain, Ohio does hereby specifically consent to the transaction and improvements as detailed in this Lease Agreement for the real property described in Exhibit "A" attached hereto.

6. RENT: THE LORAIN SAILING & YACHT CLUB, INC. shall pay its rent and all other charges due for the use of the real property to the LORAIN PORT AUTHORITY, whose address is 422 Broadway, Lorain, Ohio 44052, or at such other place as shall be designated in writing, as rent for the Leased Premises, by the LORAIN PORT AUTHORITY's Executive Director.

A. "Minimum Annual Base Rent" of Eight Thousand One Hundred Dollars (\$8,100.00), the same to be paid in equal monthly installments of Six Hundred Seventy Five Dollars (\$675.00) each, in advance on the 1st day of each month, commencing on the 1st day of July, 2002 and shall continue monthly through the 31st day of December, 2012. Beginning on January 1 2013, the "Minimum Annual Base Rent" shall be Eight Thousand Nine Hundred Ten Dollars (\$8,910.00), the same to be to be paid in equal monthly installments of Seven Hundred Forty-Two Dollars and Fifty Cents (\$742.50) each, in advance on the 1st day of each month, commencing on the 1st day of January, 2013 and shall continue monthly through the 31st day of December, 2014. Beginning on January 1 of each year thereafter, or until terminated by decision of the Lorain Port Authority upon default or upon expiration of the leasehold interest granted, the Minimum Annual Base Rent shall be increased annually by an amount equal to one percent (1%) of the previous years "Minimum Annual Base Rent."

B. In addition to the "Minimum Annual Base Rent", THE LORAIN SAILING & YACHT CLUB, INC. agrees to pay to the Lorain Port Authority, in the manner and upon the conditions and at the time hereinafter set forth, during each lease year, as a "Percentage Rent" hereunder, a sum equivalent to the amount by which ten percent (10%) of all "Gross Dockage Receipts" exceeds the Minimum Annual Base Rent, plus twenty-five percent (25%) of the "Net Income from Gas Dock Operations" in excess of \$1,000 during the same lease year. Said "Percentage Rent" shall be payable at the offices of the LORAIN PORT AUTHORITY, whose address is 422 Broadway, Lorain, Ohio 44052, or at such other place as shall be designated in writing by the Lorain Port Authority's Executive Director. Said Percentage Rent shall be paid annually. As soon as is practical, but in no event later than one hundred twenty (120) days after the end of each calendar year, THE LORAIN SAILING & YACHT CLUB, INC. shall furnish to LORAIN PORT AUTHORITY a financial statement which shows its "Gross Receipts" for the prior Lease Year. It is agreed and understood that said payment shall be paid no later than one hundred twenty (120) days after the end of each calendar year.

C. The term "Gross Dockage Receipts" as used herein is hereby defined to mean gross rentals received by Lessee from:

- 1.) The summer rentals received from docks;
- 2.) The summer rentals received from dry storage; and
- 3.) The winter rentals received for winter storage.

It is further agreed that any other income received by Lessee from any source, including but not limited to that from: lift-out fees, retail sales, repair work, regatta fees, rental of gas dock, or from some other source shall not be included within the term "Gross Dockage Receipts".

D. The term "Net Revenue from Gas Dock Operations" as used herein is hereby defined to mean revenues from the sales of gas and oil products, ice, beverage and snacks, bait



and any new merchandise sold at the Gas Dock facility, less cost of goods sold (using the first-in first-out inventory method) and expenses of operation pertaining to the Gas Dock facility including but not limited to all labor, supplies, repairs, maintenance, charged utilities, licenses, permits, insurances, credit card fees, banking fees, reasonable administrative costs, and the costs of depreciation related to acquisitions of equipment, upgrades or improvements made after May 1, 2002. The parties hereto agree to reasonable work together concerning equipment acquisitions required to operate the Gas Dock or improve its operations.

E. TAXES & ASSESSMENTS: THE LORAIN SAILING & YACHT CLUB, INC. shall during the term of this Lease pay as an Additional Rent all general real estate taxes and special assessments which become due and payable upon the real property and shall, within 15 days following each such payment, send to Lorain Port Authority the "paid" tax receipt issued by the Lorain County Treasurer evidencing each such payment. In the event that any special assessments affecting the premises should be enacted during the time that this agreement is in effect, including any renewals thereof, that Lessor shall elect to have any such special assessment paid in the maximum number of installments permitted by law; Owner agrees to and shall, elect to have any such special assessment paid in the maximum number of installments permitted by law. THE LORAIN SAILING & YACHT CLUB, INC. shall during the term of this Lease have the right to contest, in its own name, or in the name of Owner and Original Lessee, any general real estate taxes or special assessments which it should deem to be unfair and/or unreasonable, by filing a real estate tax complaint with the Lorain County Auditor and instituting appeal proceedings in a court of record or with the Board of Tax Appeals of the State of Ohio in the event the decision rendered by the Lorain County Board of Revision should be unsatisfactory to it. THE LORAIN SAILING & YACHT CLUB, INC. shall not, however, in exercising its rights set forth herein, cause or permit any general real estate taxes or special assessments affecting the Premises to become delinquent.

7. IMPROVEMENTS: Subject to the approval of Lorain Port Authority, which approval shall not be unreasonably withheld or delayed, THE LORAIN SAILING & YACHT CLUB, INC. shall have the right to construct, renovate, improve, add to, remodel and remove any buildings, marina docks or other improvements on the Premises, at the sole cost and expense of THE LORAIN SAILING & YACHT CLUB, INC. THE LORAIN SAILING & YACHT CLUB, INC. shall meet annually with Lessor to evaluate said investments and submit reasonable documentation regarding the same, it being further agreed and understood that all permanent improvements to the Leased Premises, subject to the rights of any secured lender or Mortgagee, shall become the property of the City of Lorain upon the termination of the Lease referenced in this Agreement to THE LORAIN SAILING & YACHT CLUB, INC.

As additional consideration and as an inducement to the City of Lorain, Ohio to enter into this Agreement, THE LORAIN SAILING & YACHT CLUB, INC. specifically agrees to make the following improvements:

A. The demolition of the existing marina docks and installation of floating docks complete with water and electric service;

B. See drawings & specifications attached hereto as Exhibit "B"; The same shall be constructed by THE LORAIN SAILING & YACHT CLUB, INC. by January 1, 2005.

8. USE OF PREMISES: The Leased Premises are to be used as a small boat basin for the dockage and storage of small recreational boats and a meeting place for club members, organized to promote recreational boating of all types in the Lorain Harbor, Black River, and Lake Erie it being specifically agreed by the parties that:

A. THE LORAIN SAILING & YACHT CLUB, INC. shall use and occupy said premises in a careful, safe, lawful and proper manner, without waste. THE LORAIN SAILING & YACHT CLUB, INC. shall have the right to rent the docks located within the marina basin for the storage and dockage of small recreational boats.

B. THE LORAIN SAILING & YACHT CLUB, INC. will make access upon reasonable request by any member of the public to the Black River's eastern edge north of the marina basin and west of the waste water treatment plant as has been enjoyed by fishermen and sportsmen in the past. If a solution to this public access can not be found without removal of the fence, then the plan of resolution shall be approved by the Service Director of the City of Lorain, Ohio and the Executive Director of the Lorain Port Authority and any extra-ordinary cost of the desired resolution shall be covered by the Lorain Port Authority and the City of Lorain, Ohio.

C. THE LORAIN SAILING & YACHT CLUB, INC. shall have the right and privilege to lease the land areas abutting the marina basin for "dry storage" of small recreational boats.

D. THE LORAIN SAILING & YACHT CLUB, INC. shall have the right and privilege to lease the land areas abutting the marina basin for "winter storage" of small recreational boats.

E. THE LORAIN SAILING & YACHT CLUB, INC. shall have the right to rent, sell, and service small boats and motors, fishing tackle and boat gear, and the right to sell fish bait, gas, oil, refreshments, souvenirs, etc., it being further agreed that Lessee may contract and/or sub-lease with others to sell said items subject to the approval of the Lorain Port Authority, such approval not to be unreasonably withheld or unreasonably delayed.

F. THE LORAIN SAILING & YACHT CLUB, INC. shall have the right to set rental rates and prices as it deems appropriate, it being agreed, however, that the funds derived under the operation of the Leased Premises by THE LORAIN SAILING & YACHT CLUB, INC. shall be used to pay the rents due, for the improvements to be made hereunder, the maintenance and upkeep of the leased area, and also to promote sailing, to promote good seamanship, to promote water safety, and to promote recreational boating of all types in the Lorain Harbor, Black River, and Lake Erie.

G The LORAIN PORT AUTHORITY shall have the right to extend the privilege of docking along the river frontage to public agencies for civic functions, together with the right of ingress and egress across the Leased Premises to the river frontage.

H The LORAIN PORT AUTHORITY, upon reasonable notice to Lessee, shall be provided the free use on one (1) dock space each year for dockage of a designated boat. It is agreed that THE LORAIN SAILING & YACHT CLUB, INC. shall have the exclusive authority to choose the dock of the designated boat.

I THE LORAIN SAILING & YACHT CLUB, INC. as a matter of courtesy, shall grant to the United States Coast Guard, the United States Corps of Army Engineers, and/or the State of Ohio, the free use of any unrented dock. This use is intended to be occasional, and only during unrented periods.

J THE LORAIN SAILING & YACHT CLUB, INC. shall, as a matter of courtesy, grant to the United States Coast Guard the free use of any unrented or unused dock, for emergency use, and shall make reasonable and good faith efforts to assist and cooperate with the United States Coast Guard in the performance of its duties.

K THE LORAIN SAILING & YACHT CLUB, INC. shall first obtain the approval of the LORAIN PORT AUTHORITY, prior to any modification of the existing structures or rearrangement of the same, which approval shall not be unreasonably withheld or unreasonably delayed.

L It is acknowledged by THE LORAIN SAILING & YACHT CLUB, INC. that the Leased Premises was built and is intended to be used as a public service facility to promote and encourage recreational boating within the Lorain Harbor, the Black River, and Lake Erie. THE LORAIN SAILING & YACHT CLUB, INC. covenants and agrees that in its operation of the Leased Premises, it shall not use, or permit others to use, the said Leased Premises for any purpose which will in any way limit or curtail the intended purposes as stated above.

9. PARKING: THE LORAIN SAILING & YACHT CLUB, INC.'s members, and individuals renting docks from Lessee shall be permitted free use of the public parking facilities located adjacent to the "Leased Premises" without cost to THE LORAIN SAILING & YACHT CLUB, INC.

## 10 REQUIRED INSURANCE

### A. FIRE AND EXTENDED COVERAGE INSURANCE:

THE LORAIN SAILING & YACHT CLUB, INC. shall cause any buildings on the Premises, for as long as such buildings remain on the Premises, to be fully and adequately insured with a standard policy of fire and extended coverage insurance, in an amount THE LORAIN SAILING & YACHT CLUB, INC. deems appropriate, naming THE LORAIN SAILING & YACHT CLUB, INC., Lorain Port Authority, and THE LORAIN SAILING & YACHT CLUB, INC.'s Mortgagee or other lender, if any, as insured parties, as their interests

appear. Such insurance shall be written by an insurance company authorized to do business in the State of Ohio, and shall provide that such coverage may not be modified or canceled except upon at least 30 days prior written notice to Lorain Port Authority. THE LORAIN SAILING & YACHT CLUB, INC. shall ensure that the insurance procured shall be sufficient to rebuild all buildings and structures now located upon or as may be built upon the leased premises in the future during the term of this lease. THE LORAIN SAILING & YACHT CLUB, INC. shall, at all times, deliver to The Lorain Port Authority due and adequate proof of the continued existence of such insurance coverage, in the form of certificates of insurance.

**B LIABILITY INSURANCE:**

THE LORAIN SAILING & YACHT CLUB, INC. shall insure the Premises with general liability insurance, in the initial amount of \$1,000,000 combined single limit for bodily injuries, including death, and property damage, naming Lessor as an additional insured party. Such insurance shall be written by an insurance company authorized to do business in the state of Ohio, and shall provide that such coverage may not be modified or canceled except upon at least 30 days prior written notice to Lessor. THE LORAIN SAILING & YACHT CLUB, INC. shall, at all times, deliver to the Lorain Port Authority due and adequate proof of the continued existence of such insurance coverage, in the form of certificates of insurance. Lorain Port Authority shall have the right, upon written notice to THE LORAIN SAILING & YACHT CLUB, INC., but no more frequently than once every two years, to require THE LORAIN SAILING & YACHT CLUB, INC. to increase the coverage amounts, to amounts which are then commercially reasonable, to compensate for inflation and other economic factors which have occurred during the preceding two year period of time.

11. INDEMNITY: THE LORAIN SAILING & YACHT CLUB, INC. shall and will at all times hereafter indemnify and save harmless the Lorain Port Authority and the City of Lorain, Ohio from and against any and all detriment, damages, losses, demands, claims, suits, costs and expenses which they may suffer, sustain or be subject to as a result of any negligent act or omission on the part of THE LORAIN SAILING & YACHT CLUB, INC., its members, employees, sublessees' agents or representatives, in connection with the use of the Premises as aforesaid

12. MORTGAGE: THE LORAIN SAILING & YACHT CLUB, INC. shall have the conditional right to mortgage or otherwise encumber its leasehold interest in the Premises and all buildings and other improvements situated thereon, and to assign its Lease, for security purposes, to THE LORAIN SAILING & YACHT CLUB, INC.'s Mortgagee or other lender, to secure monies borrowed by THE LORAIN SAILING & YACHT CLUB, INC. from any such Mortgagee or other lender, however, no security purposes shall be lawful or recognized as appropriate hereunder, unless the proceeds of said mortgage is used to make improvements to the leased premises and the same conditional right of mortgage shall be exercised with the approval of the Lorain Port Authority's Board of Directors, which approval shall not be unreasonably withheld or unreasonably delayed. Any lender shall require THE LORAIN SAILING & YACHT CLUB, INC. to garner the approval of the Lorain Port Authority's Board of Directors to any mortgage being given to secure the repayment of debt or financing for any planned improvements upon the leased premises.

13. ASSIGNMENT: With the exception of the rental of the docks; the rental for summer and winter dry storage; the sub-leasing of the gas dock facility, and a security assignment as discussed in [12. MORTGAGE] above, THE LORAIN SAILING & YACHT CLUB, INC. shall not, at any time or in any manner, transfer, assign or sub-let, or in any way encumber this Lease, without the prior written consent of the Lorain Port Authority, which written consent shall not unreasonably be withheld.

14. COMPLIANCE WITH LAWS: THE LORAIN SAILING & YACHT CLUB, INC. shall comply with and perform all laws and regulations pertaining to the Premises, and all buildings and other improvements situated thereon, and the use and occupancy thereof, and the maintenance and repair thereof.

15. REPAIR AND MAINTENANCE: THE LORAIN SAILING & YACHT CLUB, INC. shall keep and maintain the Premises, and all buildings and other improvements situated thereon, in a good state and condition of repair, and in a good and sightly condition. THE LORAIN SAILING & YACHT CLUB, INC. shall not commit waste.

16. TRIPLE NET LEASE: Except as otherwise set forth in this Lease, the parties intend that this Lease be a "triple net lease", meaning that THE LORAIN SAILING & YACHT CLUB, INC. will pay all general real estate taxes, all special assessments (if any), all insurance premiums, all metered charges for electric, water and any other utilities and including all other costs and expenses pertaining to the use and possession of the Premises. Concerning operational power on site, the parties agree that the electric current rendered to the gas dock is not metered and the City of Lorain and Lorain Port Authority agree to provide the same, without charge, through the City of Lorain's Water Department, this service exists and is provided to the gas dock building located on the north-west corner of the Leased Premises, during the entire lease term and any extension thereof. THE LORAIN SAILING & YACHT CLUB, INC. shall have no responsibility for the costs of repairing and maintaining the sheet pile bulkheads along the Black River side and the interior perimeters of the Lorain Small Boat Basin of the Leased Premises. However, THE LORAIN SAILING & YACHT CLUB, INC. shall keep and maintain the cosmetic surfaces on exposed surfaces on the top of the bulkheads in a good state and condition of repair, and in a good and sightly condition, but shall not be required to make necessary structural repairs to existing sheet pile bulkheads along the Black River side and the interior perimeters of the Lorain Small Boat Basin of the Leased Premises.

17. ZONING: All parties represent and warrant that, as of the execution date of this Agreement, the zoning of the Premises, pursuant to the zoning resolution of the City of Lorain, Ohio, lawfully permits the use thereof for the purposes specified in [8. USE OF PREMISES] above. The Lorain Port Authority and the City of Lorain, Ohio agrees, from and after the date thereof, that it will not do any act or thing, directly or indirectly, to cause or permit such zoning classification to be changed and, if so requested in writing by THE LORAIN SAILING & YACHT CLUB, INC., that it will oppose and resist any proposed change in the zoning, in conjunction with, or separately from, THE LORAIN SAILING & YACHT CLUB, INC.

18. DEFAULT:

A. THE LORAIN SAILING & YACHT CLUB, INC. shall not be deemed to be in default under any provision of this Lease unless Lorain Port Authority should give THE LORAIN SAILING & YACHT CLUB, INC. written notice specifically describing any such claimed default, and THE LORAIN SAILING & YACHT CLUB, INC. has not corrected the same within a period of 30 days following the date on which THE LORAIN SAILING & YACHT CLUB, INC. receives such notice. Provided further, however, that in the case of a claimed default involving other than the payment of rent, THE LORAIN SAILING & YACHT CLUB, INC. shall not be deemed to be in default under this Lease if, within such 30-day grace period, THE LORAIN SAILING & YACHT CLUB, INC. exercises good faith and diligent efforts to cure such default and continues, diligently and in good faith thereafter, to attempt to cure such default and does, in fact, cure such default within a reasonable time following the date on which the cause or causes preventing THE LORAIN SAILING & YACHT CLUB, INC. from curing such default (including but not limited to governmental action or inaction) no longer exists, even though the curing of any such default should occur more than 30 days following THE LORAIN SAILING & YACHT CLUB, INC.'s receipt of the above-described written notice.

B. IF THE LORAIN SAILING & YACHT CLUB, INC. HEREIN, OR ANY PERMITTED ASSIGNEE OR SUBLESSEE OF THE LORAIN SAILING & YACHT CLUB, INC. HEREIN, OR ANY SECURED LENDER TO THE LORAIN SAILING & YACHT CLUB, INC. OR MORTGAGEE OF ANY OF THE FOREGOING, GIVES WRITTEN NOTICE TO LORAIN PORT AUTHORITY HEREIN STATING ITS NAME AND ADDRESS AND SPECIFICALLY DESCRIBING WHAT INTEREST IT HAS IN SUCH PREMISES (HEREINAFTER COLLECTIVELY REFERRED TO AS "INTERESTED PARTIES"), THEN IF LORAIN PORT AUTHORITY HEREIN GIVES ANY WRITTEN NOTICE TO THE LORAIN SAILING & YACHT CLUB, INC. HEREIN PERTAINING TO DEFAULT, AS DESCRIBED IN THIS SECTION 18, LORAIN PORT AUTHORITY HEREIN SHALL, AT THE SAME TIME, GIVE COPIES OF SUCH NOTICE TO THE INTERESTED PARTIES, AND SUCH INTERESTED PARTIES, INDIVIDUALLY AND COLLECTIVELY, SHALL HAVE THE SAME RIGHTS TO CURE SUCH CLAIMED DEFAULT AS ARE AFFORDED TO THE LORAIN SAILING & YACHT CLUB, INC. HEREIN, AND CURE THEREOF BY SUCH INTERESTED PARTIES, OR ANY OF THEM, SHALL BE TANTAMOUNT TO CURE THEREOF BY THE LORAIN SAILING & YACHT CLUB, INC. HEREIN.

19. REMEDIES UPON LESSEE'S DEFAULT:

A. Surrender of Premises: Upon any expiration or termination of this Lease, pursuant to the provisions hereof, THE LORAIN SAILING & YACHT CLUB, INC. shall quietly and peacefully surrender the Premises to LORAIN PORT AUTHORITY, and LORAIN PORT AUTHORITY, upon or any time after such expiration or termination, may, without further notice, enter upon and re-enter the Premises and possess or repossess itself thereof by summary proceeding, judgment or otherwise, and may have, hold and enjoy the Premises and the right to receive all rental income from the Premises.

B. Reletting: At any time or from time to time after termination by reason of THE LORAIN SAILING & YACHT CLUB, INC.'s default, LORAIN PORT AUTHORITY may rent the Premises or any part thereof for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term) and on such conditions as LORAIN PORT AUTHORITY may determine and may collect and receive all rental income of and from the Premises. However, such lease terms shall be arms length and shall include reasonable rental rates in order to reasonably mitigate losses resulting from any breach on the part of THE LORAIN SAILING & YACHT CLUB, INC.

C. LORAIN PORT AUTHORITY'S Recovery: In the event of any such termination by reason of THE LORAIN SAILING & YACHT CLUB, INC.'s default, whether or not the Premises or any part thereof shall have been relet, THE LORAIN SAILING & YACHT CLUB, INC. shall pay to LORAIN PORT AUTHORITY and LORAIN PORT AUTHORITY shall recover from THE LORAIN SAILING & YACHT CLUB, INC. the Rent and all other charges required to be paid under this Lease, together with all repossession costs, brokerage commissions, legal expenses and reasonable attorneys' fees. In the event LORAIN PORT AUTHORITY re-lets the Premises, THE LORAIN SAILING & YACHT CLUB, INC. shall receive a credit for the Rents received in an amount not to exceed the Rent payable hereunder.

D. Remedies Cumulative: The rights upon default as aforesaid are cumulative and are in addition to all others allowed at law or in equity, including but not limited to rights of specific performance.

20 TERMINATION OF LEASE: The parties acknowledge that LORAIN PORT AUTHORITY may terminate this Lease at any time the THE LORAIN SAILING & YACHT CLUB, INC. is in default and/or after the expiration of the lease term or any optioned renewal term. If LORAIN PORT AUTHORITY terminates this Lease, as provided for above, individuals renting from the THE LORAIN SAILING & YACHT CLUB, INC. may continue to use the area or space rented to them by THE LORAIN SAILING & YACHT CLUB, INC. to the end of their seasonal rental agreement between THE LORAIN SAILING & YACHT CLUB, INC. and the individual. It is agreed that a rental agreement term may not exceed a period of three (3) years. THE LORAIN SAILING & YACHT CLUB, INC. agrees to indemnify and hold the Lorain Port Authority and the City of Lorain, Ohio harmless from any claim relating to paid seasonal rent. Specifically, should default status be declared and not cured and the lease terminated, then any individuals renting from the THE LORAIN SAILING & YACHT CLUB, INC. may continue to use the area or space rented to them by THE LORAIN SAILING & YACHT CLUB, INC. only to the end of the year's season and no seasonal rental agreement extending beyond that year's end shall be honored. Any disputes regarding monies collected shall be handled by the THE LORAIN SAILING & YACHT CLUB, INC. and the individual. It is agreed that any rents collected subsequent to the termination of THE LORAIN SAILING & YACHT CLUB, INC.'s leasehold interest shall belong to the LORAIN PORT AUTHORITY.

21. NO DISCRIMINATION:

THE LORAIN SAILING & YACHT CLUB, INC. shall at all times permit any resident of the City of Lorain to become a member of The Lorain Sailing & Yacht Club, Inc. upon

payment of its standard annual membership fees, and further agrees to comply in all respects with Local, State, and Federal law regarding non-discriminatory conduct as to membership in The Lorain Sailing & Yacht Club Inc., and use of the Leased Premises;

22. NO LIENS: THE LORAIN SAILING & YACHT CLUB, INC. shall defend, indemnify and save harmless LORAIN PORT AUTHORITY and the CITY OF LORAIN, OHIO from and against any and all mechanic's and other liens and encumbrances filed by any person claiming through or under THE LORAIN SAILING & YACHT CLUB, INC., including security interests in any materials, fixtures, equipment or any other improvements or appurtenances installed in and constituting part of the Premises and against all costs, expenses and liabilities (including reasonable attorneys' fees) incurred in connection with any such lien or encumbrance or any action or proceeding brought thereon. Pursuant to any Chapter of the Ohio Revised Code, including the provisions of Chapter 1311 of the Ohio Revised Code, under no circumstances shall the interest of LORAIN PORT AUTHORITY in and to the Premises be subject to liens for improvements made by THE LORAIN SAILING & YACHT CLUB, INC. or subject to any mechanic's, laborer's or material man's lien or any other lien or charge on account of or arising from any contract or obligation of THE LORAIN SAILING & YACHT CLUB, INC.

23. COVENANT OF QUIET ENJOYMENT: Conditioned upon THE LORAIN SAILING & YACHT CLUB, INC.'s performance of the provisions hereof, in accordance with the terms hereof, THE LORAIN SAILING & YACHT CLUB, INC. shall, at all times, have the peaceable and quiet enjoyment of the Premises, and all parts thereof, without let or hindrance by LORAIN PORT AUTHORITY, the CITY OF LORAIN, OHIO, or any party claiming by, through or under them; and Lessor shall secure Lessee in quiet possession thereof against all persons lawfully claiming the same during the entire Lease Term and any extension thereof.

24. RECORDING OF INSTRUMENT: The parties agree that this *LEASE AGREEMENT* shall be recorded in its entirety with all exhibits as attached hereto; The same shall be recorded with the Lorain County Recorder at the expense of LORAIN PORT AUTHORITY.

25. ACCESS: THE LORAIN SAILING & YACHT CLUB, INC. shall permit Lorain Port Authority and its agents to enter upon the Leased Premises at all reasonable times for the purpose of inspecting the same.

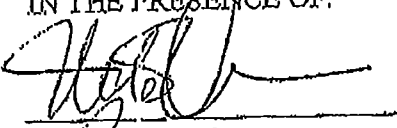
26. NO MODIFICATIONS: This *LEASE AGREEMENT* is integrated and expresses the complete and entire agreement between the parties and no promise, representation, warranty, covenant, agreement or other undertaking not specifically contained herein shall be binding upon or inure to the benefit of either party hereto; It contains all of the parties understandings and shall not be altered, changed or otherwise modified except by a written document executed by all parties hereto. The provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their legal representatives, successors and assigns.



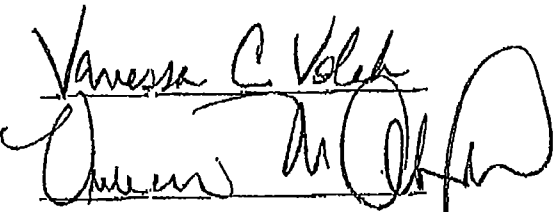
27. GOVERNING LAW: This agreement shall be construed under and in accordance with the laws of the State of Ohio, and all obligations of the parties created hereunder are performable in Lorain County, Ohio.

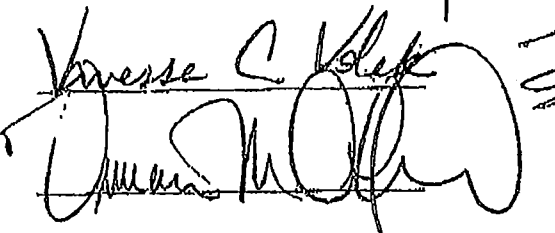
IN WITNESS WHEREOF, the parties representatives hereto have set their hands on the dates hereinafter noted.

SIGNED AND ACKNOWLEDGED  
IN THE PRESENCE OF:

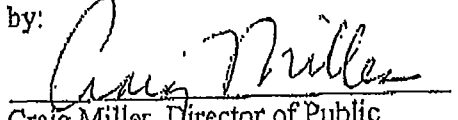




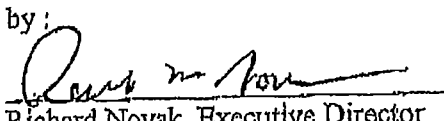




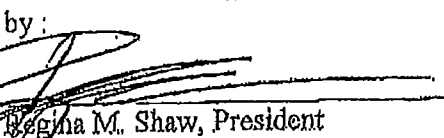
City of Lorain, Ohio,

by:   
Craig Miller, Director of Public  
Safety & Service City of Lorain, Ohio

Lorain Port Authority,

by:   
Richard Novak, Executive Director

The Lorain Sailing & Yacht Club, Inc.,

by:   
Regina M. Shaw, President

STATE OF OHIO/LORAIN COUNTY SS:

Before me, a Notary Public, personally appeared, The City of Lorain, Ohio's contracting agent Craig Miller, Director of Public Safety & Service City of Lorain, Ohio, the Lessee herein, who acknowledged that he did sign the foregoing agreement in his official capacity as a duly authorized agent of the City of Lorain, Ohio and that the same is his free act and deed as such authorized agent.

In witness whereof, I hereunto set my hand and seal this 27<sup>th</sup> day of June, 2005.

  
Notary Public

Robyn Baker  
Notary Public, State of Ohio  
My Commission Expires October 31, 2005

STATE OF OHIO/LORAIN COUNTY SS:

Before me, a Notary Public, personally appeared, The Lorain Port Authority's contracting agent Richard Novak, Executive Director of the Lorain Port Authority, the Lessor herein, who acknowledge that he did sign the foregoing instrument in his official capacity as a duly authorized agent of the Lorain Port Authority and that the same is his free act and deed as such authorized agent.

In witness whereof, I hereunto set my hand and seal this 23<sup>rd</sup> day of JUNE, 2002.



*Christine Partridge*  
Notary Public

STATE OF OHIO/LORAIN COUNTY SS:

Before me, a Notary Public, personally appeared, The Lorain Sailing & Yacht Club, Inc.'s contracting agent Regina M. Shaw, President, who acknowledge that she did sign the foregoing instrument in her official capacity as a duly authorized agent of The Lorain Sailing & Yacht Club, Inc. and that the same is her free act and deed as such authorized agent.

In witness whereof, I hereunto set my hand and seal this 25<sup>th</sup> day of JUNE, 2002.



*Christine Partridge*  
Notary Public

Instrument Prepared By:  
The Lorain Port Authority  
Robert J. Gargas, Esq.  
1670 Cooper Foster Park Road  
Lorain, Ohio 44053  
(440) 960-1670

*Mark R. Provenza 6/26/02*

CONTRACT APPROVED AS TO FORM: MARK PROVENZA, DIRECTOR OF LAW

\* This Lease Agreement is subject to approval of Lorain City Council

07/26/2006 16:03 440-244-1872

LORAIN PORT AUTHORITY

PAGE 16

05/13/2002 15:29 440-250-1572

RJ GARGASZ CO LPA

PAGE 02  
P.2/2

JUN 13 '02 09:17AM LORAIN LAW DEPT.

*AMENDED LANGUAGE TO BE INSERTED IN CLAUSE 2 AFTER "OPTIONS TO RENEW FOR 5 YEAR TERM".*

REVERTER CLAUSE: Upon the expiration of the initial twenty-five and one-half year term of this lease on December 31, 2027, and THE LORAIN SAILING & YACHT CLUB, INC.'s exercise of its option to renew for a period of five years commencing January 1, 2028, in the event of the abandonment or non-use of the premises as a small boat basin, or, in the event that a determination is made by the Council of the City of Lorain that said premises are needed for future harbor improvements, or, in the event that THE LORAIN SAILING & YACHT CLUB, INC.'s policies in operation of said small boat basin are contrary to law, the premises shall revert to THE CITY OF LORAIN, OHIO.

**EXHIBIT "A" (Legal Description)**

Situated in the City of Lorain, County of Lorain and State of Ohio. Being known as part of Original Black River Township Lot No. 1, Tract 1 and more definitely described as follows:

Beginning at a point being the intersection of the Southwesterly line of Alabama Avenue and the Northeasterly line of Lakeside Avenue. Thence South  $60^{\circ} 02' 04''$  West, a distance of 136.91 feet to a drill hole in a concrete marker. Said drill hole formerly was designated as the Principal Place of Beginning at a Southeasterly corner of land conveyed to the United States Coast Guard Life Saving Reservation as recorded in Volume 105, Page 163 of Lorain County Deed Records. Thence North  $47^{\circ} 40' 36''$  West, a distance of 77.64 feet to a point. Thence North  $65^{\circ} 18' 36''$  West, a distance of 77.64 to a point. Thence North  $65^{\circ} 18' 36''$  West, a distance of 124.82 feet to an iron pin found and being the Principal Place of Beginning for the land herein described.

Thence South  $47^{\circ} 43' 40''$  West, a distance of 57.77 feet to an iron pin found.

Thence South  $15^{\circ} 09'$  West, a distance of 200.85 feet to the existing dock line and passing thru an iron pin found 4.47 feet Southwesterly of the iron pin found on the previous mentioned course.

Thence North  $76^{\circ} 22' 10''$  West along the existing dock line and spanning the entrance channel of the existing boat basin, a distance of 277.17 feet to an angle point in the existing dock line.

Thence North  $63^{\circ} 27'$  West along the existing dock line, a distance of 168.00 feet to a point.

Thence North  $32^{\circ} 39'$  East, a distance of 45.50 feet to a point.

Thence North  $76^{\circ} 25'$  East, a distance of 23.70 feet to a point.

Thence North  $14^{\circ} 05'$  East, a distance of 151.55 feet to a point.

Thence South  $76^{\circ} 09'$  East, a distance of 332.00 feet to a point.

Thence North  $13^{\circ} 51'$  East, a distance of 24.67 feet to a point of curve.

Thence in the arc of curve deflecting to the right and having a radius of 40.00 feet and a central angle of  $135^{\circ} 00'$ ; a chord of 73.91 feet bearing North  $81^{\circ} 21'$  East, a distance of 94.25 feet to a point of tangency.

Then South  $31^{\circ} 09'$  East, a distance of 56.00 feet to a point.

Thence South  $5^{\circ} 01' 20''$  East, a distance of 7.92 feet to the Principal Place of Beginning, embracing an area of 2.3246 acres be the same more or less.

Exhibit B

Lorain Sailing & Yacht Club  
Preliminary Drawings & Specifications

Handwritten initials 'DL' and a signature.

The contents of this Exhibit B include the April 15, 2002 Dock replacement proposal submitted by Atlantic-Meeco. The project may not be completed by this supplier and the completed project may vary somewhat but will be substantially similar in nature to Atlantic-Meeco's Drawings and Specifications with utility services including one potable water spigot and one 30 amp service supply for each boat berth.

As provided in Section 7. IMPROVEMENTS, final plans and specifications will be submitted to the Lorain Port Authority for final approval

Project shall consist of:

- Demolition of the existing dock structures
- Dredging as permitted
- New floating docks as per page 6 of this Exhibit
- Electrical Service per code to supply one 30 amp service per boat berth
- Potable Water Service to supply one spigot per boat berth