

**LEASE
AGREEMENT**

THIS LEASE, made this 17th day of July, 2014 by and between the *City of Toledo, an Ohio municipal corporation*, hereinafter called the "**LESSOR**" or the "**City**," and *The Toledo Sailing Club, an Ohio non-profit corporation*, P.O. Box 141133, Toledo, Ohio 43614, hereinafter called "**LESSEE**".

WHEREAS, on the 15th day of July, 2014, the Council of the City of Toledo, Ohio passed Ordinance No. 299-14 authorizing a lease for The Toledo Sailing Club's continued use of certain real property located at Walbridge Park: consisting of 15 pre-identified parking spaces in the upper parking lot closest to The Toledo Sailing Club's property for member parking; and the seasonal use of approximately 3,000 sq. ft. of the lower parking lot near the boat launch for off-season storage of The Toledo Sailings Club's boat docks.

WHEREAS, LESSEE'S use of the herein described property will be limited to parking of member vehicles and seasonal storage of boat docks; and

WHEREAS, LESSOR and LESSEE desire to formalize the agreement between them whereby the City shall lease to LESSEE the subject land herein described.

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein contained, it is agreed between the LESSOR and LESSEE as follows:

1. **Premises.** The LESSOR hereby demises and leases to LESSEE a portion of the real property located at Walbridge Park consisting of fifteen (15) parking spaces in the existing parking lot as described in Exhibit A attached hereto and incorporated herein by reference and the seasonal use of a portion of the real property consisting of 3,000 sq. ft. of the lower parking lot as shown on Exhibit "B" attached hereto and incorporated herein by reference, in the City of Toledo, Lucas County, Ohio (herein referred to as the "Leased Premises" or "Premises")
2. **Condition of Premises.** LESSEE hereby accepts said Premises "as-is", in the condition it is at the commencement of the term hereof, subject to all defects therein, whether concealed or otherwise, and LESSEE hereby acknowledges that LESSOR has not made any representations or warranties, either written or oral, express or implied, with respect to the conditions, suitability, or state of repair of the Premises. LESSEE agrees to defend, indemnify and save harmless the LESSOR from all liability in any way arising out of the use, occupation or condition of said Premises or any of the Improvements thereon, including any liability arising out of environmental conditions, whether known or unknown.
3. **Use of Premises.** The Leased Premises as identified in Exhibit "A" are to be used by LESSEE solely for the purpose to temporarily park member vehicles and shall not be used for any other purpose without LESSOR'S prior written consent. The Leased Premises as identified in Exhibit "B" are to be used by LESSEE solely for the purpose of off season storage of the LESSEE'S floating boat docks *from approximately mid-Oct to mid-April (weather reasonably permitting) annually* and shall not be used for any other purpose without LESSOR'S prior written consent. LESSOR shall have no responsibility for any improvements on the Premises. LESSEE shall at all times comply with all applicable

federal, state and local laws, ordinances, rules and regulations that may pertain to the Premises or its use of the Premises and LESSEE agrees that any violation of this covenant shall be grounds for immediate cancellation of this LEASE. LESSEE shall not commit, or suffer to be committed, any waste upon the Premises, or allow any public or private nuisance, nor shall LESSEE voluntarily create, cause, or allow to be created any debt, lien, charge or other encumbrance to be apportioned against the Premises leased hereunder.

4. **Assignment.** LESSEE shall not assign, transfer, or surrender any of its rights and/or duties under this Agreement without first having obtained the prior written consent of the LESSOR. In any event, no assignment or transfer of this Lease, estate, or interest of LESSEE hereunder shall operate to release said LESSEE from the rents, agreements, and covenants of this Lease to be paid or performed by LESSEE.
5. **Term.** This Lease shall commence the 1st day of August 2014 and shall continue for a period of three (3) years, terminating the 31st day of July 2017 (the "Term"). LESSEE shall have the option to renew this Lease for two (2) additional one year terms by providing LESSOR written notice of such intention to renew the Lease at least sixty (60) days prior to the new Renewal Term thereof.
6. **Rent.** LESSEE agrees to pay the LESSOR as rental for said Premises the sum of One Thousand Two Hundred Fifty Dollars (\$1,250.00) payable annually by August 1st of each year in advance ("Rent"). Payments should be made payable to the *City of Toledo* and sent to the *City of Toledo, Real Estate Division, One Government Center / Suite 2250, Toledo, Ohio 43604*. The Rent includes fifteen (15) parking spaces in the City of Toledo pay parking lot at Walbridge Park at no additional cost, which are set aside for valid and current members of the Toledo Sailing Club. Such parking spaces will be identified by posted signs as being reserved for the Toledo Sailing Club. Proof of valid and current membership will be required to use the designated fifteen parking spaces. Rent also includes the seasonal use of 3,000 sq. ft. of the lower parking lot solely for the purpose of off season storage of the LESSEE'S floating boat docks *from approximately mid-Oct to mid-April (weather reasonably permitting) annually*.
7. **Maintenance and Repair / Improvements and Alteration.** LESSEE shall make no improvements to or modifications of the Premises, without the prior written consent of LESSOR (the "Improvements"). If such consent is granted by LESSOR, the LESSEE shall submit plans and specifications for the Improvements to the LESSOR and LESSEE shall obtain LESSOR'S written approval for such Improvements. LESSEE shall be solely responsible for all costs and expenses in connection with any Improvements or alterations to the Premises. LESSEE shall be solely responsible for maintaining and repairing all Improvements that it makes to Premises.
8. **Surrender.** LESSEE shall surrender the Leased Premises at the end of the Term in as good a condition as at the commencement of this Lease, reasonable wear and tear excepted. LESSEE agrees that any temporary or permanent Improvements made by LESSEE to the Leased Premises shall be removed immediately at the termination of this Lease and LESSEE shall immediately restore the Premises to its original condition.
9. **Mechanics' Liens.** LESSEE agrees that it will pay or cause to be paid all costs for any Improvements or work done by it or caused to be done by it on the Premises, and will keep the Premises free and clear of all mechanics' liens on account of work done by LESSEE or persons claiming under it. LESSEE acknowledges that it has no authority from LESSOR

to subject LESSOR'S fee estate to any lien, whether voluntary or involuntary, and that no mechanic, laborer or materialman claiming by, through, or under LESSEE shall ever be entitled to a lien on any estate other than LESSEE'S leasehold estate. LESSEE is not the agent of LESSOR for any purpose and no one is entitled to rely upon any representation to the contrary.

10. **Indemnification and Insurance.** The City of Toledo Indemnification and Insurance provisions attached hereto as Exhibit "C" are hereby incorporated by reference and made a part of this Lease.
11. **Taxes.** It is recognized by the parties hereto that the Leased Premises hereunder when owned by LESSOR are tax-exempt as publicly-owned property used exclusively for public purposes and that the Premises are tax-exempt pursuant to Ohio Revised Code Chapter 5709. In the event that any taxes are levied or assessed on the Premises as a result of LESSEE'S use of the Premises, LESSEE agrees to pay all such taxes.
12. **Utility Expenses.** LESSEE agrees to pay the cost of any and all utility expenses on said Premises incurred as a result of LESSEE'S use of the Premises and will indemnify and hold harmless LESSOR against the same.
13. **Entire Agreement.** This Lease contains the entire agreement between the parties and cannot be amended unless the amendment is in writing and executed by the parties.
14. **Notices.** Any notice, demand or declaration required or which may be given pursuant to this Lease shall be in writing and shall either be served personally or sent by registered or certified mail, return receipt requested, with postage pre-paid and addressed as follows:

To Lessor: City of Toledo / Dept. of Public Service
 Division of Parks, Recreation and Forestry
 2201 Ottawa Parkway
 Toledo, Ohio 43606

Copy to: City of Toledo / Department of Economic & Business Development
 Real Estate Division
 One Government Center, Suite 2250
 Toledo, Ohio 43604

To Lessee: The Toledo Sailing Club
 P.O. Box 141133
 Toledo, Ohio 43614

15. **Miscellaneous.**
 - a. LESSEE shall not assign this Lease nor sublet any part of the Leased Premises hereunder without the written consent of LESSOR.
 - b. The Premises shall not be used for any unlawful purpose, or in any manner contrary to, or in violation of, the laws of the City of Toledo, Ohio, and all other rules and regulations and orders promulgated by lawful authority relating to the use of said Premises, nor in any manner use same so as to damage or injure any person, persons or property in or near the Premises.

- c. LESSEE shall keep the Leased Premises, all Improvements thereon and appurtenances thereto in a clean, sanitary and healthy condition.
- d. LESSEE agrees to accept responsibility for all normal daily maintenance to the Premises and any structure thereon.
- e. Subject first to a thirty (30) day written notice and cure period, which may include additional time as is reasonable necessary to cure such default so long as LESSEE diligently pursues such cure, if LESSEE shall fail to comply with any of the terms or conditions of this Lease or any notice given hereunder, or shall become issued against it, or if a petition be filed by or against it, to have it adjudicated a bankrupt, or if a trustees or receiver shall be created or appointed to take care of its assets, or if it should desert or abandon the Premises hereunder for a period of thirty (30) days, then or at any time thereafter, LESSOR may, at its option, enter in the Premises and take and retain possession thereof either with or without process of law.
- f. Subject to the notice and curative provisions in the preceding section, it is agreed by LESSEE that its failure to comply with any of the covenants or conditions contained herein shall, at the option of LESSOR, void this Lease and render the same null and void and shall constitute grounds for forfeiture and ejection from the Premises.
- g. It is understood by and between the parties hereto that all agreements and understandings of any character heretofore had between them are embodied in this instrument, and no changes shall be made herein, unless the same be made in writing and duly signed by the parties hereto in the same manner and form as this Lease has been executed.
- h. All notices, demands and requests which may or are required to be given by either party to the other shall be in writing.
- i. LESSOR hereby covenants and agrees with LESSEE that if LESSEE performs all covenants and agreements herein agreed to be performed on its part, said LESSEE shall at all times during the Term hereof, have the peaceable and quiet enjoyment of possession of the Leased Premises without any manner of let or hindrance from LESSOR or any persons lawfully claiming said Premises.
- j. The terms, conditions and provisions of this Lease shall inure to and be binding upon LESSOR and LESSEE and their respective permitted successors and assigns.
- k. It is the intent of the parties hereto that LESSEE hereunder shall be legally considered as independent and that neither it or its officers, employees or agents shall, under any circumstances be considered servants or agents of the City of Toledo, Ohio, and that the City of Toledo, Ohio shall at no time be legally responsible for any acts, omissions, or negligence on the part of said LESSEE, its officers, employees, servants or agents or members resulting in either personal or property damage to any individual, firm or corporation.
- l. When and in the event possession of the Premises hereinabove leased may be deemed by LESSOR as necessary for any public or municipal purpose or use whatsoever, this

Lease may be cancelled at any time by LESSOR upon giving one hundred twenty (120) days notice in writing to the LESSEE.

- m. Nothing in this Lease limits the LESSOR from licensing, leasing or in any way contracting out the management, operation or maintenance of the Walbridge parking facility at the sole discretion of the LESSOR, except that any such license, lease or contract shall be subject to the rights of LESSOR under this Lease.

IN WITNES WHEEOF, the said LESSOR and LESSEE have hereunto set their hands to duplicates hereof on the day and year first above written.

LESSEE: The Toledo Sailing Club, an Ohio Non-Profit Corporation

LESSOR: City of Toledo, an Ohio Municipal Corporation

By: Douglas Hoff

By: D. Michael Collins

Name: Douglas Hoff

D. Michael Collins, Mayor

Title: Treasurer

STATE OF OHIO)
) SS:
COUNTY OF LUCAS)

Before me, a Notary Public in and for Lucas County, Ohio, personally appeared Douglas Hoff, who acknowledged that he is the Treasurer of The Toledo Sailing Club, an Ohio non-profit corporation and is fully authorized to sign said Lease; that this instrument is the voluntary act and deed of The Toledo Sailing Club; and that his signature appears hereon as his voluntary act and deed for the purposes herein set forth.

2nd IN WITNESS WHEREOF, I have hereunto subscribed my name at Toledo, Ohio, this day of July 2014.

Rachell D. Fox
NOTARY PUBLIC



RACHELL D. FOX
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES 02-28-2018

EXHIBIT "A"

15 DESIGNATED PARKING SPACES



EXHIBIT "B"

Seasonal Use 3,000 sq. ft. of the Lower Parking Lot

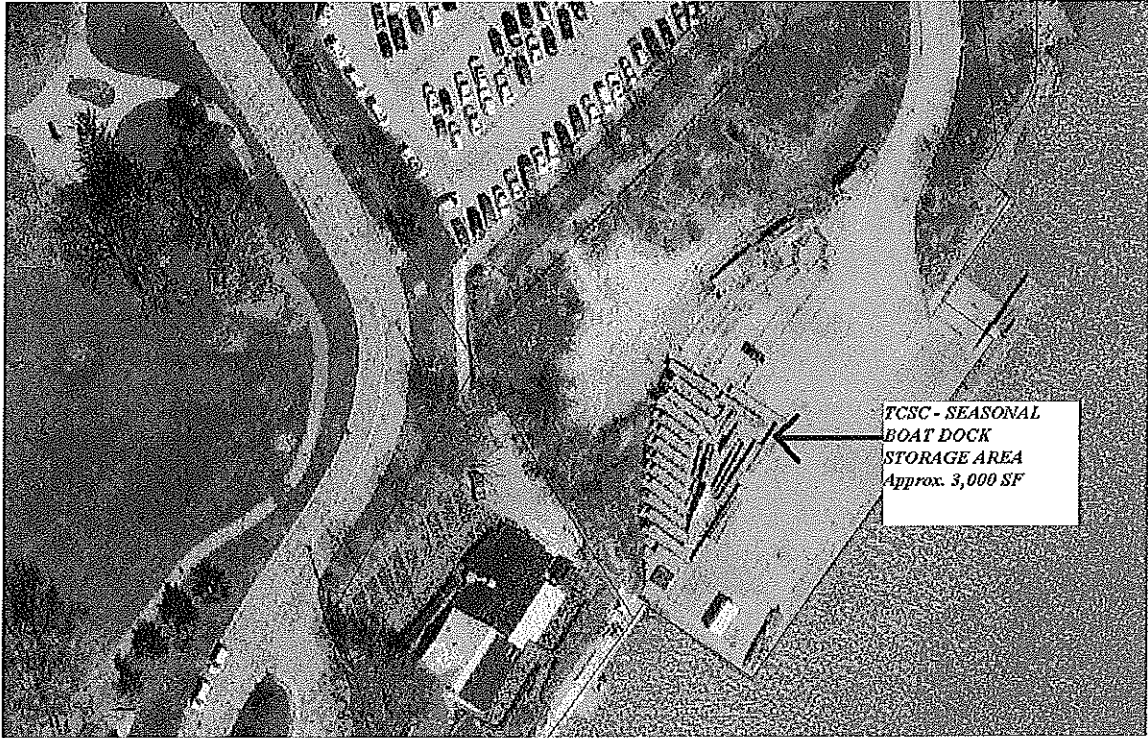


EXHIBIT "C"

INSURANCE REQUIREMENTS

Casualty Loss. If any building, structure, or other Improvements located on the Premises should be damaged by fire or other casualty, then LESSEE may, at its option, either (i) repair or reconstruct solely at its own cost or expense the buildings and/or Improvements to substantially the same or better condition than existed prior to the date of such casualty, or (ii) within ninety (90) days after the date of the fire or other casualty return possession of the Premises to LESSOR with all buildings, damage and debris removed from the surface of the Premises, in which event this Lease shall terminate, effective as of the date of such damage. LESSEE shall be entitled to receive all insurance proceeds where it is a named insured and where such proceeds are payable as a result of any damage to the buildings or Improvements on the Premises occurring during the term of this Lease, as long as such proceeds are used for the sole purpose of repairing such damage to or reconstructing the Leased Premises. Otherwise, such proceeds shall belong to LESSOR.

Indemnification of LESSEE.

- a. The LESSEE shall defend, hold harmless and indemnify the LESSOR, its elected and appointed officials, officers, agents and employees from and against any and all losses, damages, judgments, claims or expenses, including all attorneys fees whatsoever by reason of injury, including death, to any person or property, or loss or damage to property, arising in any manner or under any circumstance whatsoever from LESSEE'S (including its agents, contractors, vendors, employees, invitees, licensees, members or volunteers however known) use, occupancy, operations or other activities in connection with the use of the Premises, whether said injury or damage is suffered by LESSEE, LESSEE'S subtenants, agents, contractors, vendors employees, invitees, licensees, members or volunteers or any other person whomsoever seeks to hold the LESSOR or its elected and appointed officials, officers, agents and/or employees liable. It is understood and agreed that this indemnification obligation is enforceable to the full extent permitted by Ohio Revised Code Section 2305.31, and shall survive the termination of this Lease.
- b. LESSEE shall take reasonable precautions for safety of and shall provide reasonable protection to prevent damage, injury, or loss to any agency, employee, invitees, licensees, member or volunteer of LESSEE or to any other person or persons or personal property on the Leased Premises or to any person or persons or personal property which may be affected thereby.
- c. In any and all claims against LESSOR by any agent, employee, member or volunteer of the LESSEE, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, LESSEE expressly waives the immunity provided to LESSEE by Article II, Section 35 of the Ohio Constitution and Ohio Revised Code Sections 4123.74 and 4123.741 so that this indemnification obligation may be enforced by the LESSOR against LESSEE in those instances.
- d. The indemnification obligation of LESSEE shall not be limited in any way by the insurance requirements set forth herein, but shall be separate from and in addition to those requirements. The LESSEE expressly understands that the insurance requirements outlined in this Lease are minimum requirements to be met under the Lease and do not in

any manner represent any opinion of LESSOR that the limits, coverage or policy forms are sufficient or adequate to protect the interest or liabilities of the LESSEE. The indemnification obligation provided for herein shall survive termination of this Lease.

General Liability Insurance. LESSEE shall maintain in effect throughout the term of this Lease commercial general liability insurance as follows:

\$1,000,000 general aggregate limit; \$1,000,000 products completed operations aggregate limit; \$1,000,000 personal and advertising injury limit (per person/organization); \$1,000,000 each occurrence (bodily injury and property damage).

Umbrella/excess liability insurance in the amount of \$5,000,000.

The City of Toledo, its officials, officers and employees shall be named as additional insured, ISO from CG 20 10-(11 85).

This Policy shall not exclude by endorsement or otherwise, explosion, collapse and underground.

The coverage shall contain a clause that states that the insured is required to procure and pay for any defense of claims, if necessary.

Waiver of Subrogation. The Policy shall contain a Waiver of Subrogation stating that the LESSEE and its agent or assigns, waive all rights against the City, its officials, officers, agents and employees for any general commercial liability loss, however caused.

Certificates of Insurance. Certificates of Insurance acceptable to the City, and naming the City as additional insured, shall be filed with the City prior to commencement of the lease. These certificates and the insurance policies required by this paragraph shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least (30) day's prior written notice has been given to the City. If any of the insurance coverage is required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment.

Condition Precedent. The insurance provisions above shall be a condition precedent to the existence of this Lease; such insurance policies required to be obtained by LESSEE shall be submitted to the LESSOR for approval by its Department of Law and Risk Management Officer before this Lease shall take effect. The continued existence of such insurance shall be a condition precedent to the right of the LESSEE to use the Leased Premises as herein set forth.

Insurance - All Risk Coverage. LESSEE shall procure and maintain at all times during the term hereof, at its sole cost and expense, replacement cost (to the extent of at least eighty percent (80%) of such replacement costs) "All-Risk" coverage insurance on any Improvements, with standard exceptions. LESSEE shall furnish to LESSOR a certificate evidencing such coverage. Further, any policy required to be maintained under this Lease by either party may be maintained under a so-called "blanket policy" insuring other locations so long as the amount of insurance required under this Lease is not diminished thereby and the Premises are specifically scheduled on any such blanket policy.

On Specific Contents: The LESSEE shall be responsible to insure any contents of the building owned by LESSEE and any personal property owned by LESSEE or any other person or persons against such loss. The LESSOR shall have no liability or responsibility for non-City-owned items contained in and/or present in the Premises.

Approval of Insurance Coverage. LESSEE shall furnish LESSOR'S *Department of Development's Real Estate Division* with a certificate or certificates of insurance (ACORD 25-S) and a copy of each additional insured endorsement in effect during the term of the Lease. A copy of the policy or policies shall also be provided to LESSOR upon request. All insurance coverage required to be maintained by LESSEE shall be in such form and with such companies that are acceptable to the Director of the City's Department of Law and the Risk Management Officer of LESSOR.

The LESSEE expressly understands that the insurance requirements as outlined above are minimum requirements to be met under this contract and do not in any manner represent that the limits, coverage, or policy forms are sufficient or adequate to protect the interest or liabilities of the LESSEE, its agents or assigns.

LESSEE acknowledges and grants LESSOR and its employees, contractors and agents (including its property conservation engineers) access to inspect the Leased Premises at all reasonable times and agree that LESSEE will at its own expense immediately correct (or suspend if required) any deficiency reasonably noted in LESSEE's use, operation, equipment or otherwise as noted by the reports of such inspecting persons or by the LESSOR itself.

DOD TSC Lease Parking & Boat Dock Storage
J. Morell ext. 1431
June 24, 2014
Revised

ORD. 299-14

Authorizing the Mayor to enter into a Lease Agreement with the Toledo Sailing Club for their continued use of certain property within Walbridge Park for vehicular parking spaces and for off-season boat dock storage; authorizing the receipt and deposit of lease proceeds; making certain findings and waivers with respect thereto; and declaring an emergency.

SUMMARY & BACKGROUND:

In 2001 & 2002, the Toledo Sailing Club entered into Lease Agreements with the City of Toledo for use of property at Walbridge Park for member vehicular parking and for off-season storage of their boat docks. The parking space area consists of 15 spaces in the upper parking lot adjacent to their facilities and the boat dock storage encompasses 3,000 square feet of the lower parking lot. The Toledo Sailing Club would like to memorialize their continued use of both the parking and boat dock storage areas. Rent for the parking spaces shall be \$750 and rent for the off season boat dock storage area shall be \$500 for a total of \$1,250 annually. NOW, THEREFORE,

Be it ordained by the Council of the City of Toledo:

SECTION 1. That the Mayor and the Director of Parks, Recreation and Forestry are authorized to enter into a lease with the Toledo Sailing Club, for that portion of the real property located at Walbridge Park, consisting of 15 parking spaces in the upper parking lot and for that portion of the lower parking lot for off season dock storage; both areas shown on attached Exhibit "A".

SECTION 2. That it is found and determined that the real estate to be leased pursuant to the terms of the Agreement is real estate which is not needed for municipal purposes; that the disposition to the Toledo Sailing Club in accordance with the Agreement is in the best interest of the City; that disposition of the said real estate by negotiation pursuant to the Agreement is the appropriate method for generating revenues for the Marina Development Fund; that the negotiated lease as set forth in the Agreement is a fair and reasonable value for said real estate; and that it is in the best interest of the City to lease the subject property without competitive bidding.

SECTION 3. That said lease agreements shall commence effective August 1, 2014 and specify an initial term of three (3) years with two (2) one (1) year options to renew.

SECTION 4. That said lease agreement shall specify other terms and conditions deemed necessary and appropriate by the Mayor, the Director of Law, the Department of Public Service and the Department of Economic and Business Development.

SECTION 5. That the Finance Director is authorized to accept and deposit the rental payments into Account Code 2007-60300-772X001STDSTD.

SECTION 6. That this Council approves the Agreement, including the lease of said real estate provided for therein, notwithstanding and as an exception to the provisions of Chapter 187 and other provisions, if any, of the Toledo Municipal Code.

SECTION 7. That it is found and determined that all formal actions of City Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of Council and that all deliberations of Council and any of its committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements, including Section 121.22, Ohio Revised Code.

SECTION 8. That this Ordinance is declared to be an emergency measure and shall take effect and be enforced immediately from and after its passage. The reason for the emergency lies in the fact that the same is necessary for the immediate preservation of public health, safety and property and to allow the Toledo Sailing Club continued use of these sites within Walbridge Park.

Vote on emergency clause: yeas 10, nays 0.

Passed: July 15, 2014, as an emergency measure: yeas 9, nays 1.

Attest:

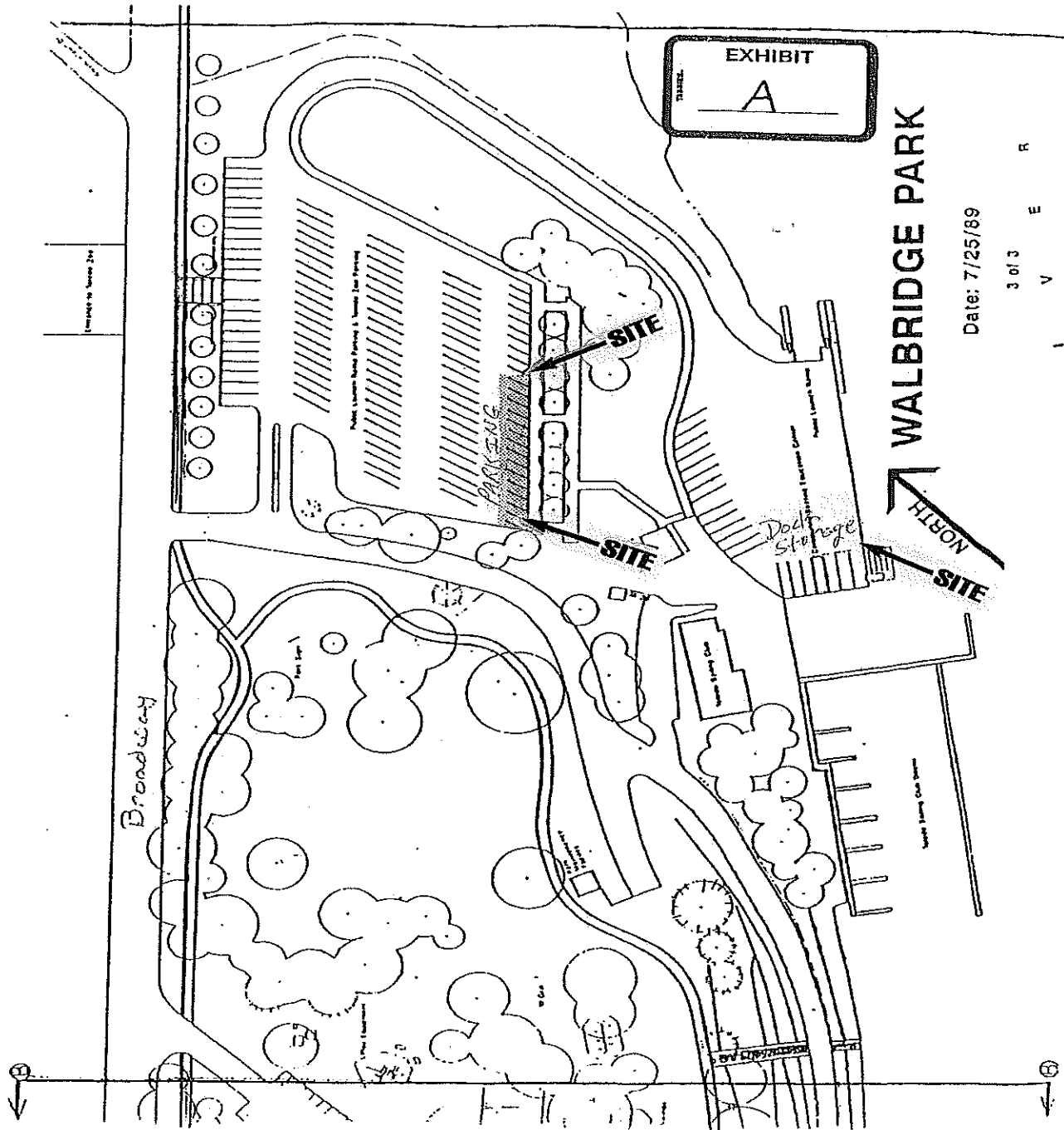
Gerald E. Dendinger
Clerk of Council

Paula Hicks-Hudson
President of Council

Approved:

July 17, 2014
D. Michael Collins
Mayor

EXHIBIT "A"



Date: 7/25/89

3 of 3
V E R

CITY OF TOLEDO
CONTRACT APPROVAL SIGN-OFF SHEET

Lessee Name: The Toledo Sailing Club
 Grantee Address: P.O. Box 141133
 City, State, Zip: Toledo, OH 43614

Toledo/Lucas/Wood/Fulton Address (If different than above): _____

Is this award to an MBE/WBE concern?: YES NO N/A - PROPERTY OWNER

If No, % Minority Employees: _____ and % Female Employees: _____

Contract Caption: Lease Agreement (2 originals)

Amount: \$ 1,250 annual Ordinance No.: 299-14 Contract No.: N/A

Dept./Div.: Real Estate Contact: J. Morell, Real Estate Adm. Phone No.: ext. 1431

Bid? YES NO Number of Bidders: _____ Number of MBE/WBE Bidders: _____

Low Bid? YES NO Did local preference ordinance determine low bid? YES NO

Comments: Attached for signature are 2 originals of the Lease Agreement for The Toledo Sailing Clubs's continued use of property located within Walbridge Park consisting of 15 pre-identified parking spaces in the upper lot and use of approx. 3,000 sf of the lower lot for off-season storage of boat docks.

DATE IN	SIGNATURES	DATE OUT
<u>7/15/14</u>	<u>William H. Frankler</u> Originating Department/Division	<u>7/15/14</u>
_____	N/A Purchasing	_____
_____	N/A Contract Compliance	_____
_____	N/A Finance	_____
_____	N/A Taxation	_____
_____	N/A Purchasing	_____
<u>7/16/14</u>	<u>Eileen Zandt</u> Law <u>7/16</u>	<u>7/16/14</u>
<u>7/17/14</u>	<u>Michael Collins</u> Mayor	<u>7/17/14</u>

Bid Opening: _____ Bid Recommendation: _____

Contract Sent to Vendor: _____ Contract Returned From Vendor: _____

After signing, please **HAND-DELIVER** to office of next required signer.